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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 332

RUPERT WATSON d/b/a MAINE-WIDE ADJUSTERS,

Appellant,

—v.—

STATE OF MAINE BANK COMMISSIONER,

Appellee.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

JURISDICTIONAL STATEMENT

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INDEX

PAGE

Jurisdictional Statement 1

Opinion Below 1

Jurisdiction 2

Statutes Involved 3

Questions Presented 3

Statement of the Case 4

The Questions Are Substantial 6

1. 32 M. R. S. A. §575, on its face, and as interpreted and applied in this case, violates Section 1 of the Fourteenth Amendment to the United States Constitution in that it effects a deprivation of liberty and property without due process of law by erecting an absolute bar for the receipt, by a person in Appellant's position, of licenses to operate collection agencies? 10

2. 32 M. R. S. A. §575, on its face, and as interpreted and applied in this case, violates Section 1 of the Fourteenth Amendment to the United States Constitution, in that, without procedural due process of law, it establishes a permanent lifelong bar to Appellant's pursuit of a lawful vocation, solely because of a prior criminal con-

PAGE

viction, and does not even provide any opportunity for persons in Appellant's position to attempt to prove rehabilitation? 18

3. 32 M. R. S. A. §575, on its face, and as interpreted and applied in this case, violates the prohibition against *ex post facto* laws contained in Section 10 of Article I of the United States Constitution? 22

CONCLUSION 26

APPENDIX:

Opinion of Justice Marden 27

Statutory Provisions 40

TABLE OF AUTHORITIES

Cases:

Afroyim v. Rusk, 35 U. S. L. Week 4502 (May 29, 1967) 10, 11

Baraky v. Board of Regents, 347 U. S. 442 ..... 18, 19
Boston v. Robbins, 153 Me. 128, 135 A. 2d 279 (1957) 8
Bates v. City of Little Rock, 361 U. S. 516 16

Calder v. Bull, 3 Dall. 386 ..... 24, 25
Cummings v. Missouri, 71 U. S. (4 Wall.) 277 ..... 21, 22

DeVeau v. Braisted, 363 U. S. 144 ..... 3, 16, 18, 23, 24, 25
Doyle v. State, 158 Me. 190, 181 A. 2d 586 (1962) 8
Driver v. Hinnant, 356 F. 2d 761 (4th Cir. 1966) 15

PAGE

Easter v. District of Columbia, 361 F. 2d 50 (D. C. Cir. 1966) 15
Edwards v. California, 314 U. S. 160 15
Ex parte Garland, 71 U. S. (4 Wall.) 333 22

In re Gault, 87 S. Ct. 1428 ..... 10, 19
Gideon v. Wainwright, 372 U. S. 335 22
Greene v. McElroy, 360 U. S. 474 ..... 11, 19
Griswold v. Connecticut, 381 U. S. 479 11

Hallinan v. Committee of Bar Examiners, 55 Cal. Rptr. 228, 421 P. 2d 76 (S. C. Calif. In Bank, 1966) 11
Harper v. Virginia State Board of Elections, 383 U. S. 663 11
Hawker v. New York, 170 U. S. 189 ..... 8, 18, 22, 23, 25

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123 19

Kennedy v. Mendoza-Martinez, 372 U. S. 144 ..... 21, 22, 25

Lambert v. California, 355 U. S. 225 15

Malinski v. New York, 324 U. S. 401 19
Mullane v. Central Hanover Bank and Trust Co., 339 U. S. 306 19

Pointer v. Texas, 380 U. S. 400 ..... 19, 22

Robinson v. California, 370 U. S. 660 15
Rochin v. California, 342 U. S. 165 11
Rudolph v. Alabama, 375 U. S. 889 12

PAGE

Skinner v. Oklahoma, 316 U. S. 535 ..... 15, 19
Schware v. Board of Bar Examiners, 353 U. S. 232 ..3, 11, 18
Sheldon v. Tucker, 364 U. S. 479 17
Slochower v. Board of Education, 350 U. S. 551 18

Truax v. Raich, 239 U. S. 33 11

United States v. Brown, 381 U. S. 437 .....12, 20, 21, 22, 25

Wieman v. Updegraff, 344 U. S. 183 18

Federal Constitutional Provisions:

Section 10, Article I, U. S. Const. 2, 4, 23
Fifth Amendment, U. S. Const. 22
Sixth Amendment, U. S. Const. 22
Fourteenth Amendment, U. S. Const. 2, 3, 4, 10, 11, 18, 22

Federal Statute:

Title 28, U. S. C. §1257(2) 3

State Constitutional Provisions:

State of Maine Constitution, Art. I, §1 2
State of Maine Constitution, Art. I, §6A 2
State of Maine Constitution, Art. V, pt. 1, §11 ..... 2, 8

State Statutes:

4 M. R. S. A. §804 14
15 M. R. S. A. §§2161-2166 (1964) 8
Title 34, Maine Revised Statutes Annotated 13
32 M. R. S. A. ch. 1, §§1-57 13

PAGE

32 M. R. S. A. §55 14
32 M. R. S. A. §202 15
32 M. R. S. A. §206 15
32 M. R. S. A. §207 15
32 M. R. S. A. §251 14
32 M. R. S. A. §254 14
32 M. R. S. A. §402 14
32 M. R. S. A. §407 14
32 M. R. S. A. §552 14
32 M. R. S. A. §§571-583 ..... 2, 3, 5, 6, 17
32 M. R. S. A. §573(2) 6
32 M. R. S. A. §573(3) 6
32 M. R. S. A. §573(4) 9
32 M. R. S. A. §573(5) 6, 9, 10
32 M. R. S. A. §574 9
32 M. R. S. A. §575 ..... 2, 3, 4, 5, 7, 10, 11, 12, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26
32 M. R. S. A. §576 6
32 M. R. S. A. §578 ..... 6, 9, 10
32 M. R. S. A. §579 6
32 M. R. S. A. §580(1) 9
32 M. R. S. A. §580(2) 9
32 M. R. S. A. §581 6
32 M. R. S. A. §852 14
32 M. R. S. A. §1002 14
32 M. R. S. A. §1109 14
32 M. R. S. A. §1111 14
32 M. R. S. A. §1155 15
32 M. R. S. A. §1356 15
32 M. R. S. A. §1455 14

	PAGE
32 M. R. S. A. §1652	14
32 M. R. S. A. §1656	14
32 M. R. S. A. §1707	14
32 M. R. S. A. §1802	15
32 M. R. S. A. §1851	15
32 M. R. S. A. §2061	15
32 M. R. S. A. §2105	14
32 M. R. S. A. §2355	15
32 M. R. S. A. §2402	15
32 M. R. S. A. §2556	14
32 M. R. S. A. §2701	14
32 M. R. S. A. §2702	14
32 M. R. S. A. §§2751-2764	15
32 M. R. S. A. §2902	14
32 M. R. S. A. §2955	14
32 M. R. S. A. §3053	14
32 M. R. S. A. §3102	14
32 M. R. S. A. §3203	14
M. R. S. A. §§3501-3507	15
M. R. S. A. §3552	14
32 M. R. S. A. §3701	14
32 M. R. S. A. §3801	14
32 M. R. S. A. §3951	14
32 M. R. S. A. §4105	14
32 M. R. S. A. §4111	14
32 M. R. S. A. §4154	15
32 M. R. S. A. §4252	14
32 M. R. S. A. §4351	14
32 M. R. S. A. §4353	14
32 M. R. S. A. §§4451-4452	15
32 M. R. S. A. §4551	14

PAGE

32 M. R. S. A. §4701 14
32 M. R. S. A. ch. 71, §§4701-4803 13
34 M. R. S. A. §1504 8
34 M. R. S. A. §1552(6) 8

Miscellaneous:

THE CHALLENGE OF CRIME IN A FREE SOCIETY (1967) 12, 13

Comment, *Civil Disabilities of Felons*, 53 Va. L. Rev. 403 (1967) 8, 11, 12, 16, 17, 18

A Compilation of State and Federal Statutes Relating to Civil Rights of Persons Convicted of Crime (Fed. Probation Officers' Ass'n 1960) 7, 13

Dressler, PRACTICE AND THEORY OF PROBATION AND PAROLE 74 (1959) 12

Note, *The Effect of a Pardon on License Revocation and Reinstatement*, 15 Hastings L. J. 355 (1964) 8

Note, The Effect of Statutes on the Civil Rights of Convicts, 47 Minn. L. Rev. 835 (1963) 8

Rubin, THE LAW OF CRIMINAL CORRECTION 608-09 (1963) 7-8

Tappan, CRIME, JUSTICE AND CORRECTION 428 (1960) 7

Tappan, *The Legal Rights of Prisoners*, 293 Annals 99 (1954) 8, 11

TASK FORCE REPORT: CORRECTIONS (1967) 12, 17, 20

IN THE

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No. .....

RUPERT WATSON d/b/a MAINE-WIDE ADJUSTERS,

Appellant,

—v.—

STATE OF MAINE BANK COMMISSIONER,

Appellee.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

JURISDICTIONAL STATEMENT

Appellant appeals from the final judgment of the Supreme Judicial Court of the State of Maine entered on October 27, 1966 denying injunctive relief and declaring valid the State of Maine's 1965 "Act regulating collection agencies," now 32 M. R. S. A. §§571-583 (1966 pocket part) inclusive, and particularly §575. Appellant submits this statement to show that the Court has jurisdiction and that substantial questions are presented.

Opinion Below

The opinion and order of Supreme Judicial Court of Maine was rendered on October 27, 1966, and is reported at —— Me. ——, 223 A. 2d 834 (1966). The opinion and judgment in this case are set out in the Appendix *infra* at pp. 27-39.

Jurisdiction

This action was initiated in Penobscot County Superior Court on February 28, 1966. On March 5, 1966 an amended complaint was filed. The action was brought under Section 1 of the Fourteenth Amendment of the Constitution of the United States, and under Article 1, Section 10 of the Constitution of the United States; and under Article 1, Sections 1, 6A and 11 of the Constitution of the State of Maine. On March 10, 1966, a temporary restraining order was granted, pending a hearing on the request for a preliminary injunction. On May 5, 1966, because of the important issues of law that were involved, the judge of the Penobscot County Superior Court executed an order sending the litigation "On Report" to the Supreme Judicial Court of Maine sitting as a Law Court, pursuant to Rules 1 and 72, Maine Rules of Civil Procedure, 8 M. R. S. A. (1965). That court was asked to pass on and did pass on the constitutionality of Section 575 of Maine's 1965 "Act regulating collection agencies," now 32 M. R. S. A. §§571-583 (1966 pocket part), inclusive. The relief requested was an injunction against the Appellee, an official of the State of Maine, from enforcing the statute complained of.

By decision and opinion entered on October 28, 1966, the Supreme Judicial Court of Maine gave judgment for the Appellee and denied all relief requested by the Appellant. Notice of Appeal was filed in the Supreme Judicial Court of Maine on January 26, 1967.

On March 28, 1967, pursuant to Rule 13(1) of this Court, by order of Robert B. Williamson, Chief Justice of the Supreme Judicial Court of Maine, an extension was granted

until May 12, 1967 for the filing of this Jurisdictional Statement. On May 11, 1967 a similar order was entered by Chief Justice Williamson, by which an additional extension of forty-five (45) days was granted from May 11, 1967 in which to file this Jurisdictional Statement.

Jurisdiction of the Supreme Court of the United States to review the decision of the Supreme Judicial Court of Maine by direct appeal is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of this Court to review the judgment in this case on direct appeal: *DeVeau* v. *Braisted*, 363 U. S. 144; *Schware* v. *Board of Bar Examiners*, 353 U. S. 232.

Statutes Involved

The provisions of the law involved in this case are: Chapter 430 Maine P. L. 1965, now 32 M. R. S. A. §§571-583 inclusive, and particularly §575. Because of its length, the text of the statutory provisions is set out in the Appendix, *infra*, at pp. 40-52.

Questions Presented

1. Is 32 M. R. S. A. §575, on its face, and as interpreted and applied in this case, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution in that it effects a deprivation of liberty and property without due process of law by erecting an absolute, unjustifiable bar to receipt, by persons in Appellant's position, of licenses to operate collection agencies in the State of Maine?

2. Is the foregoing statute, on its face, and as interpreted and applied in this case, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution, in that, without procedural due process of law, it establishes a permanent lifelong bar to Appellant's pursuit of a lawful vocation, solely because of a prior criminal conviction, and does not provide any opportunity for persons in Appellant's position to attempt to prove rehabilitation?

3. Is the foregoing statute, on its face, and as interpreted and applied in this case, in violation of the prohibition against *ex post facto* laws contained in Section 10 of Article I of the United States Constitution?

Statement of the Case

This suit challenges the constitutionality of §575 of Title 32, M. R. S. A. (1966 pocket part), which disqualifies, absolutely, any person who has been convicted in any state or federal court of certain criminal offenses, including embezzlement, from receiving a license to operate a collection agency in the State of Maine.

The Appellant, Rupert G. Watson, doing business as Maine-Wide Adjusters, is a citizen of the United States and of the State of Maine, who resides in the City of Brewer, Penobscot County, Maine. From September, 1948 to January, 1960, the Appellant owned and operated, in the State of Maine, a collection agency. On January 28, 1960 he was convicted of the crime of embezzlement and was sentenced to a term of imprisonment in the Maine State Prison at Thomaston, from which he was released

on February 25, 1963. After his release, the Appellant renewed the operation of his collection agency.

In 1965 the 102nd Legislature of the State of Maine passed "An Act regulating collection agencies," effective January 1, 1966, Chapter 430, P. L. 1965, which is now Ch. 10, 32 M. R. S. A. §§571-583, inclusive (1966 pocket part). This statute provides for comprehensive governmental supervision and regulation to assure the appropriate functioning and financial rectitude of the collection industry in the State of Maine.

Early in 1966, in compliance with the "Act to regulate collection agencies", the Appellant, who had by then operated a collection agency for fifteen years, applied for a license, supported by a required financial statement prepared by an accountant, and a $3,000 cash deposit as a bond, which was found to be acceptable by the Department of Banks and Banking. On March 1, 1966 the State Bank Commissioner, who is charged under the Act with the chief responsibility to supervise and regulate collection agencies, informed the Appellant by letter that, pursuant to 32 M. R. S. A. §575, his application was denied because of his conviction for embezzlement. No other reason was put forth for the refusal to grant Appellant a license. His cash deposit was subsequently returned.

Appellant then brought suit in the Penobscot County Superior Court for declaratory judgment on the validity of Section 575 and for injunctive relief. Because of the important issues of law, on agreement of the parties and the court, the case was sent "on report," with an agreed statement of facts, to the Supreme Judicial Court of Maine which, by decision and order dated October 27, 1966, re-

solved all federal and state constitutional issues against the Appellant, declared the statute to be valid, and denied the injunctive relief that had been requested.

The Questions Are Substantial

By the terms of the Act, a "collection agency," defined therein, 32 M. R. S. A. §§571-572, to include proprietorships so operating, is required to procure an annual license for each of its offices, at $100 apiece, from the State Bank Commissioner, 32 M. R. S. A. §573. Operation of a collection agency without a license is a misdemeanor punishable by a $500 fine or up to six months imprisonment. 32 M. R. S. A. §573(2).

With one exception, the Bank Commissioner is authorized generally to exercise his own discretion in granting, renewing, suspending and revoking licenses.[2] He may deny a license "if the applicant is not qualified under this chapter", 32 M. R. S. A. §573(5); he may renew a license only "so long as [he] regards the business as responsible and safe", 32 M. R. S. A. §573(3); and he may suspend or revoke a license "if a licensee violates any provisions of this chapter,[3] or fails to maintain its financial condition sufficient to qualify for a license on an original application",[4] 32 M. R. S. A. §578. In one particular, however,

[1] Licenses may be suspended or revoked only after notice and hearing. 32 M. R. S. A. §578. Suspensions, revocations, denials and failures to renew are all judicially reviewable. 32 M. R. S. A. §579.

[2] 32 M. R. S. A. §576 describes some twenty-two "Prohibited practices," seven of which involve, or are concerned with potential misuse of funds.

[3] 32 M. R. S. A. §581 authorizes the Bank Commissioner, with court assistance, to exercise broad powers to take possession of and liquidate "Delinquent [Insolvent] collection agencies."

Maine's Legislature has prohibited the Bank Commissioner from exercising sound administrative discretion in his licensing and regulatory capacities. 32 M. R. S. A. §575 provides absolutely, that:

> *"No license shall be granted* to any applicant if an individual or to any partnership or corporate applicant if such applicant or any partner of a partnership applicant or officer or director of a corporate applicant, or employee of the foregoing has been convicted in any state or federal court of the crime of forgery, fraud, obtaining money under false pretenses, embezzlement, extortion, larceny, burglary, breaking and entering, robbery, criminal conspiracy to defraud, or bribery, *of which the record of conviction or a copy certified by the clerk or judge of the court shall be conclusive evidence.* No license shall be granted to any lawyer whose license to practice law has been suspended or revoked, during the effective period of such suspension or revocation." (Emphasis supplied.)

Apparently, "pardon by the appropriate state or federal authority qualifies one to apply for restoration of a license" that he has lost, presumably as a result of an exercise of discretion by the particular Maine State Board authorized to issue a license, because of suspension on the ground of a felony conviction. *A Compilation of State and Federal Statutes Relating to Civil Rights of Persons Convicted of Crime* p. 17 (Fed. Probation Officers' Ass'n 1960). However, research discloses nothing to indicate that in the State of Maine a pardon tolls the force of an absolute disqualification statute, such as Section 575. See, *e.g.*, Tappan, Crime, Justice and Correction 428 (1960); Rubin, The

LAW OF CRIMINAL CORRECTIONS 608-09 (1963); Note, *The Effect of Statutes on the Civil Rights of Convicts*, 47 MINN. L. REV. 835, 848-49 (1963); *Hawker* v. *New York*, 170 U. S. 189, 204 (dissenting opinion); see, generally, *e.g.*, Tappan, *The Legal Rights of Prisoners*, 293 ANNALS 99, 103 n. 19 (1954). Moreover, in the State of Maine the pardoning power resides in the unreviewable discretion of the Governor and the Executive Council of Maine. See Maine Const., Art. V, pt. 1, §11; Ch. 307, 15 M. R. S. A. §§2161-2166 (1964); 34 M. R. S. A. §§1504, 1552(6) (1964); *Baston* v. *Robbins*, 153 Me. 128, 135 A. 2d 279 (1957); *Doyle* v. *State*, 158 Me. 190, 181 A. 2d 586, 590 (1962), *cert. denied*, 371 U. S. 849. Restoration of rights, therefore, is "a matter of gubernatorial leniency rather than a considered policy of correctional rehabilitation." Tappan, *supra*, 293 ANNALS at 103 n. 22; see also, *e.g.*, Note, *The Effect of a Pardon on License Revocation and Reinstatement*, 15 HASTINGS L. J. 355 (1964); Comment, *Civil Disabilities of Felons*, 53 VA. L. REV. 403, 405-406 (1967). Nevertheless, after the decision of the Supreme Judicial Court of Maine, the Appellant undertook unsuccesaful efforts to secure a pardon. On January 10, 1967 he applied for a pardon. He was given a hearing on his application on April 5, 1967, and his application was denied on April 7, 1967. See certification of the office of the Secretary of State of Maine, appendix, *infra*, pp. 54-55.

The absolute bar to licensing of persons in the Appellant's situation, on the ground of acts performed either after *or before the statute's passage*, crowns a series of more moderate and reasonable provisions designed both to assist and direct the Bank Commissioner in his task of insuring, through the exercise of his comprehensive li-

censing and regulatory powers, the financial integrity of collection agencies. First, all applicants for licenses must file surety company bonds with the Bank Commissioner. 32 M. R. S. A. §574. Second, a certified copy of the applicant's charter and by-laws, and a broad, irrevocable power-of-attorney, for service of process purposes, must also be filed. 32 M. R. S. A. §573(5). Third, upon request an applicant must file financial reports and statements with the Bank Commissioner, who, in deciding whether to grant a license, "may make or cause to be made an independent investigation concerning the applicant's [and his management personnel's] reputation, integrity, competence and net worth." 32 M. R. S. A. §573(4). Fourth, "The Commissioner may investigate the collection records of a licensee and for that purpose shall have free access to the books and records of a licensee relating thereto." 32 M. R. S. A. §578. Fifth, the Commissioner is empowered to require "at any time . . . a licensee to submit to the department [of Banks and Banking] a verified statement for examination by the commissioner so that he may determine whether the licensee is financially responsible to carry on a collection agency business within the intents and purposes of this chapter." 32 M. R. S. A. §580(1). Sixth, each licensee is required "to keep such books and records in his place of business in this State as will enable the commissioner to determine whether the provisions of this chapter are being complied with." 32 M. R. S. A. §580(2). Seventh, records of each account must be preserved for a period of six years after it is closed out. *Ibid.* Finally, as already noted, the Bank Commissioner is given broad powers to suspend, revoke or refuse to renew licenses "if a licensee violates any provisions of this chapter, . . . or fails to

maintain its financial condition sufficient to qualify on an original application. . . . " 32 M. R. S. A. §578; see also 32 M. R. S. A. §573(3); notes 1 and 2 *supra*.

1. 32 M. R. S. A. §575, on its face, and as interpreted and applied in this case, violates Section 1 of the Fourteenth Amendment to the United States Constitution in that it effects a deprivation of liberty and property without due process of law by erecting an absolute bar for the receipt, by a person in Appellant's position, of licenses to operate collection agencies?

This Court recently declared that the framers of the Fourteenth Amendment "wanted to put citizenship beyond the power of any governmental unit to destroy," *Afroyim* v. *Rusk*, 35 U. S. L. WEEK 4502, 4505 (May 29, 1967), and that "the Fourteenth Amendment prevents Congress [or any governmental unit] from doing any of these things": "'abridge,' 'affect,' 'restrict the effect of,' and 'take away' citizenship." 35 U. S. L. WEEK at 4506. The right to due process of law, as protected by the Fourteenth Amendment is one of the most important attributes of "citizenship" in this country. As Mr. Justice Fortas, speaking for the Court, recently wrote, with specific reference to its procedural aspects, "Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the State may exercise." *In re Gault*, 87 S. Ct. 1428, 1439-1440. Moreover, in numerous decisions the Court has established the fundamental principle that the right to work at the occupation of one's choice is a basic liberty pro-

tected by the due process clause, and that the State can restrict this liberty only with and for good cause. *E.g.*, *Truax* v. *Raich*, 239 U. S. 33, 41; *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, 238-39; *Greene* v. *McElroy*, 360 U. S. 474, 492; see also, generally, *Hallinan* v. *Committee of Bar Examiners*, 55 Cal. Rptr. 228, 421 P. 2d 76 (S. C. Calif. In Bank, 1966).

Absolute disqualification of convicted felons, such as found in 32 M. R. S. A. §575, from participation in particular occupations raises serious questions of deprivation of this liberty and property without due process of law. Such disqualifications are relics of "the old retributive penology [that] was predicated on the view that the proven criminal was an 'outlaw' without legal rights. Not only might he be subjected to the crudest penalties, *but he lost his citizenship* (if not his life), his identity of person, and his property." Tappan, *The Legal Rights of Prisoners*, 293 ANNALS 99 (1954) (emphasis supplied). *Accord*, Comment, *Civil Disabilities of Felons*, 53 VA. L. REV. 403, 423 (1967). Such an approach is inconsistent with our contemporary regard for the individual and citizen and for his rights. See *Afroyim* v. *Rusk*, 35 U. S. L. WEEK 4502 (May 29, 1967). Any rash, purely retributive approach to penology is, moreover, markedly inconsistent with contemporary correctional theory and practice, which must bear upon the contemporary meaning to be given the "liberty" and "property" protected by the Fourteenth Amendment. Compare *Harper* v. *Virginia State Board of Elections*, 383 U. S. 663, 669-670; *Griswold* v. *Connecticut*, 381 U. S. 479; *Rochin* v. *California*, 342 U. S. 165.

This Court has recognized that "punishment serves several purposes; retributive, rehabilitative, deterrent and

preventive." *United States* v. *Brown*, 381 U. S. 437, 458. Absolute bars to entry into occupations, such as established in 32 M. R. S. A. §575, interfere with achievement of most, and perhaps the best aims of punishment and correction—rehabilitation, deterrence, and prevention.[4] See, Report by the President's Commission on Law Enforcement and Administration of Justice, THE CHALLENGE OF CRIME IN A FREE SOCIETY 165 (1967). In fact, such absolute bars increase "the likelihood of recidivism" "by so handicap[ping] an individual as to make it difficult for him to live honestly after release." Comment, *Civil Disabilities of Felons*, 53 VA. L. REV. 403, 423 (1967), quoting from DRESSLER, PRACTICE AND THEORY OF PROBATION AND PAROLE 74 (1959).

The disruption to the rehabilitative aims of correction caused by absolute disqualifications is particularly egregious. As the Task Force on Corrections of the President's Commission on Law Enforcement and Administration of Justice recently observed:

> "The kind of job a person holds determines, to a large extent, the kind of life he leads. This is true not merely because work and income are directly related, but also because employment is a major factor in an individual's position in the eyes of others and indeed of himself. Work is therefore directly related to the goals of corrections." TASK FORCE REPORT: CORRECTIONS p. 32 (1967).

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[4] Notably, several members of the Court indicated doubt as to the constitutional validity of retribution as an aim for punishment, when they declined to include retribution in a list of examples of permissible aims. *Rudolph* v. *Alabama*, 375 U. S. 889 (Goldberg, Douglas and Brennan, JJ., dissenting from the denial of certiorari).

The President's Commission itself recommends the reduction of "barriers to employment posed by discrimination, the misuse of criminal records and maintenance of rigid job qualifications." THE CHALLENGE OF CRIME IN A FREE SOCIETY 77 (1967), noted that:

> "There are many specific barriers to reentry. Perhaps the most damaging are those limiting employment opportunity. The inability of ex-offenders to obtain the bonding needed for certain kinds of employment; licensing restrictions that deny them access to certain kinds of work; and outright ineligibility for many forms of employment. The rituals surrounding the banishment of a lawbreaker are very potent, but there are no rituals to remove from him the label of offender when he seeks to reenter the community." *Id.* at 168-169.

Review of the State of Maine's legislative code reveals that Maine's laws dealing with occupational licensing create precisely the kind of situation that has caused much of the concern on the part of the President's Commission. See *A Compilation of State and Federal Statutes Relating to Civil Rights of Persons Convicted of Crime* pp. 16-17 (Fed. Probation Officers' Ass'n 1960). Title 32 of the *Maine Revised Statutes Annotated*, collects most of Maine's statutes regulating "Professions and Occupations," ranging from Accountants, 32 M. R. S. A. Ch. 1, §§1-57, to Veterinarians, 32 M. R. S. A. Ch. 71, §§4701-4803, with stops all along the alphabet. These laws, conforming to no rational order or system, occupy 339 pages in the main portion of volume 15 M. R. S. A. (1965) and 49 pages in the 1966 pocket part. Express provision is made, with respect to numerous occu-

pations, for *the exercise of discretion* by the appropriate licensing authorities to revoke, suspend or refuse to issue or reissue licenses upon the conviction of a licensee or an applicant of crimes[3] (generally limited to those involving moral turpitude) or of felonies.[5] Numerous provisions also empower licensing boards to pass upon the "good moral character" of similar traits of the applicants.[6] Some provisions even appear to authorize licensing authorities to exercise unfettered discretion in determining whether or not to issue licenses,[7] some either give no discretion or give unfettered discretion.[8] Aside from the one established in 32 M. R. S. A. §575, the provision at issue in this case, research has disclosed only one other absolute disqualification of persons convicted of crimes from licensing—32 M. R. S. A. §3701, a law of very curious and limited application, permitting the licensing of practitioners of healing arts or

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[3] See 32 M. R. S. A. §§55 (Accountants), 254 (Auctioneers), 407 (Barbers), 552 (Chiropractors), 1109 (Dentists and Dental Hygienists), 1111 (same), 1455 (Funeral Directors and Embalmers), 1656 (Hairdressers and Beauticians), 2105 (Nurses and Nursing), 2556 (Optometrists), 2702 (Osteopaths), 3053 (Physical Therapists), 3203 (Physicians and Surgeons) (1966 pocket part), 4111 (Real Estate Brokers and Salesmen), 4701 (Veterinarians).

[5] See 32 M. R. S. A. §§55 (Accountants), 251 (Auctioneers) (1966 pocket part), 402 (Barbers), 552 (Chiropractors), 852 (Dealers in Securities) (This occupation, as Appellant's, is subject to the supervision of the Bank Commissioner), 1002 (Dentists and Dental Hygienists), 1652 (Hairdressers and Beauticians), 1707 (Manufacturers and Sellers of Lightning Rods), 2701 (Osteopaths), 2702 (Same), 2902 (Pharmacists) (1966 pocket part), 2955 (Photographers), 3102 (Physical Therapists), 3552 (Physicians and Surgeons), 3951 (Psychologists), 4105 (Real Estate Brokers and Salesmen); 4 M. R. S. A. §804 (Lawyers).

[6] See 32 M. R. S. A. §3801 (Private Detectives).

[7] See 32 M. R. S. A. §4252 (Tattoo Artists); see also, 32 M. R. S. A. §§4351 (Taxidermists), 4353 (Fur dealers), 4551 (Itinerant vendors).

sciences, who are not registered as physicians, surgeons, nurses and the like, and who had engaged in such a practice in the State of Maine prior to January 1, 1931.*

It is within this foregoing elaborate jungle of regulations upon entry by persons convicted of crimes into numerous occupations and professions that 32 M. R. S. A. §575 must be judged. When viewed in this context, the Appellant submits that Section 575 can only be seen as fixing upon the convict a permanent, disadvantaged "status" and, in effect, continuing his punishment after his release from prison, for acts or situations no longer within his volition. Maine's absolute disqualification provision, therefore, raises substantial constitutional questions involving due process of law. See, *e.g.*, *Robinson* v. *California*, 370 U. S. 660; *Easter* v. *District of Columbia*, 361 F. 2d 50 (D. C. Cir. 1966); *Driver* v. *Hinnant*, 356 F. 2d 761 (4th Cir. 1966); *cf.*, *Lambert* v. *California*, 355 U. S. 225; *Skinner* v. *Oklahoma*, 316 U. S. 535; *Edwards* v. *California*, 314 U. S. 160.

Assuming arguendo that in some circumstances the disqualifications from licensing established in 32 M. R. S. A. §575 bear some rational relationship to a legitimate State interest of protecting the public from financial misfeasance, a serious question is nevertheless presented of whether

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* It is perhaps more notable, that a number of licensing authorities *are authorized to exercise discretion* over the issuance, revocation or suspension of licenses only with respect to technical qualification for performance in the occupation or profession or to actual acts of misfeasance in the course of performance in the occupation or profession. 32 M. R. S. A. §§202 (Architects), 206 (same), 207 (same), 1155 (Electricians), 1356 (Engineers), 1802 (Manufacturers and Bottlers of Nonalcoholic Beverages), 1851 (same), 2061 (Nurserymen and Arborists) (1966 pocket part), 2355 (Oil Burner Men), 2402 (same), 2751-2764 (Outdoor Advertisers), 3501-3507 (Plumbers) (1966 pocket part), 4154 (Sardine Packers), 4451-4452 (Transporting or Cutting of Christmas Trees) (pockets parts 1966).

Section 575's absolute prohibition interferes arbitrarily and unconstitutionally with the Appellant's right to freely choose his occupation.

First, this Court has ruled that: "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." *Bates* v. *City of Little Rock*, 361 U. S. 516, 524. Obviously, restriction by the State of the individual's free choice of occupations is such "a significant encroachment upon personal liberty," justified only by "showing a subordinating interest which is compelling."

It is in this respect that the present case differs from *De Veau* v. *Braisted*, 363 U. S. 144. There a plurality of the Court sustained a New York statute which operated to exclude felons from holding office in waterfront labor organizations only after careful examination of the special circumstances surrounding the New York law. Stressing the mass of evidence on which the legislature based its action, the plurality observed that "legislative investigation had established that the presence of ex-convicts on the waterfront was not a minor episode but constituted a principal corrupting influence" in a situation of the New York waterfront that was characterized as "gangrenous." 363 U. S. at 157-58. There has been no such strong demonstration of such "a subordinating interest which is compelling" in this case. *Bates* v. *City of Little Rock*, 361 U. S. 516, 524. See Comment, *Civil Disabilities of Felons*, 53 Va. L. Rev. 403, 416-418 (1966).

As one commentator has observed, *De Veau* v. *Braisted*, 363 U. S. 144, indicates "that the Court will now look closely at laws imposing civil disabilities on felons and will be reluctant to sustain those that are not buttressed by the

sort of legislative evidence found in *De Veau*." Comment, *Civil Disabilities of Felons*, 53 VA. L. REV. 403, 418 (1966). Such scrutiny is likely to disclose that the State of Maine has some interest in supervising the collection agency industry. But the complex and comprehensive regulatory and licensing provisions of Maine's "Act regulating collection agencies," 32 M. R. S. A. §§571-583, inclusive (1966 pocket part), reveals that the State has more limited means at its disposal to assure attainment of any of its legitimate interests. Even if 32 M. R. S. A. §575 were eliminated, the Bank Commissioner has been vested with ample power to assure preservation of the State's legitimate interests. See "Statement," *supra*, pp. 8-10, and, footnote 9, *supra*, touching on alternative approaches already existing in the *corpus* of Maine law; TASK FORCE REPORT: CORRECTIONS 91 (1967), recommending other alternative procedures to preserve the public interest. As this Court has held, "[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." *Shelton* v. *Tucker*, 364 U. S. 479, 488.

2. 32 M. R. S. A. §575, on its face, and as interpreted and applied in this case, violates Section 1 of the Fourteenth Amendment to the United States Constitution, in that, without procedural due process of law, it establishes a permanent lifelong bar to Appellant's pursuit of a lawful vocation, solely because of a prior criminal conviction, and does not provide any opportunity for persons in Appellant's position to attempt to prove rehabilitation?

In the absence of a strong showing such as was made in *De Veau* v. *Braisted*, 363 U. S. 144, to justify across-the-board disqualification of felons, this Court has held that before disqualifying an applicant from an occupation (in the particular case admission to the practice of law) on the ground of a prior offense, "the nature of the offense which he has committed must be taken into account." *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, 243.[10] *Cf., e.g., Wieman* v. *Updegraff*, 344 U. S. 183, 191; *Slochower* v. *Board of Education*, 350 U. S. 551, 558-59. The Court has also indicated that the appropriate inquiry to be made by the licensing or admitting authority might be to consider, "whether the convictions, if any, were of such a date and nature as to justify denial of admission to practice in the *light of all material circumstances before the Board.*" *Barsky* v. *Board of Regents*, 347 U. S. 442, 451. (Emphasis supplied.) As demonstrated in the discussion under Question 1, the extent

[10] The *De Veau* and *Schware* cases significantly limit any proposition that may be read into *Hawker* v. *New York*, 170 U. S. 189, "that states have a broad power to establish qualifications for entry into certain professions which are subject only to cursory review." Comment, *Civil Disabilities of Felons*, 53 VA. L. REV. 403, 417 (1966). Moreover, the only challenge in *Hawker* was that the state statute constituted an ex post facto law, and the full scope of due process was not in issue. *Hawker* is taken up at greater length under Question III, *infra*.

and character of rehabilitation are among the "material circumstances" that the due process clause makes relevant. Furthermore, neither the nature of the offense, nor its relationship to the vocation sought to be pursued, nor the other "material circumstances" can properly be evaluated in the absence of an "opportunity for a fair hearing," 347 U. S. at 451; see also, *Id.* at 446; *Skinner* v. *Oklahoma*, 316 U. S. 535, 543-547 (Stone, *C.J.*, and Jackson, *J.*, concurring), a right which is deeply imbedded in our constitutional notion of due process of law, see, *e.g.*, *Greene* v. *McElroy*, 360 U. S. 474, 496-499; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 165-172 (Frankfurter, *J.*, concurring),[11] and is applicable to the states. See, *e.g.*, *Pointer* v. *Texas*, 380 U. S. 400; *Mullane* v. *Central Hanover Bank and Trust Co.*, 339 U. S. 306, 313. It is notable that the Task Force on Corrections of the President's Commission on Law Enforcement and Administration of Justice very recently recommended that with respect to occupational licensing and regulation:

> "Criminal convictions should be considered only to the extent actually relevant to fitness to participate in activities posing particular dangers to society. The legislature might specify particular convictions as grounds for disqualification, leaving it to a court or agency to determine the merits of each case. The legislature might mandate disqualification on the basis of selected, particularly relevant convictions. But it would ordinarily be best to provide for discretion so that the relevance of particular convictions could be

[11] "The history of American freedom is in no small measure the history of procedure." *Malinski* v. *New York*, 324 U. S. 401, 414 (Frankfurter, J., concurring), quoted in *In re Gault*, 87 S. Ct. 1428, 1440.

> weighed in the light of, for example, the period of time since the criminal offense, the behavior of the individual during the time, and the hardship that disqualification might cause." TASK FORCE REPORT: CORRECTIONS 91 (1967).

No provision is made in 32 M. R. S. A. §575 or in any other portion of Maine's "Act regulating collection agencies" pursuant to which Appellant may receive any kind of a hearing on his qualifications, much less a hearing in the form recommended by the Task Force on Corrections.[12]

The failure of the Maine Legislature to provide for a procedure such as those recommended by the Task Force on Correction or for some other kind of fair hearing (instead of erecting an absolute disqualification) raises a serious question of a violation of procedural due process. The failure to provide a fair hearing at which the Appellant's qualifications for licensing could be determined in the light of all the relevant circumstances (including rehabilitation) is particularly fraught with important questions of due process in that the sanction being applied here is not merely regulatory, but is also punitive in nature (see generally, discussion under Question 1, *supra*) and in this particular case is being applied retroactively.

In *United States* v. *Brown*, 381 U. S. 437, the Court struck down as a bill of attainder an act of Congress that made it unlawful for a Communist or one who had within five years been a Communist to become an officer of a labor organization. In the course of its decision, the Court ruled that:

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[12] As already noted, *supra*, it is by no means clear that a pardon would lift Appellant's disability; pardons are given as a matter of the merest discretion; and Appellant has applied for and been denied a pardon.

> "It would be archaic to limit the definition of 'punishment' to 'retribution'. Punishment serves several purposes: retributive, rehabilitative, deterrent—and preventive. One of the reasons society imprisons [or otherwise applies sanctions against] those convicted of crimes is to keep them from inflicting future harm, but that does not make imprisonment [or other sanction] any the less punishment." 381 U. S. at 458.[18]

Obviously, prevention and deterrence (and possibly retribution) were among the motives of the Legislature of the State of Maine for enacting 32 M. R. S. A. §575, and, under the test articulated in the *Brown* case, the statute is punitive.

The punitive character of the disability erected by Section 575 is rendered even more obvious when the disability is measured by the tests for "punishment" established by the Court in *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144. The questions to be considered are:

> "Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as punishment, whether it comes into play only on finding of *scienter*, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned. . . ." 372 U. S. at 168-69.

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[18] In *Cummings* v. *Missouri*, 71 U. S. (4 Wall.) 277, 322, the Court ruled that punishment is not "restricted . . . to the deprivation of life, liberty, or property, but also embrac[es] deprivation or suspension of political or civil rights."

The Appellant submits that when each of these questions is asked with respect to Section 575, the obvious answers compel the conclusion that this is a law that provides for punishment. First, the sanction does involve an affirmative disability. Second, historically it has been regarded as punishment. See, *e.g., Cummings* v. *Missouri,* 71 U. S. (4 Wall.) 277; *Ex parte Garland,* 71 U. S. (4 Wall.) 333; *Hawker* v. *New York,* 170 U. S. 189, 200-205 (dissenting opinion). Third, the sanction could not be applied except upon an earlier finding of *scienter.* Fourth, under Question 1, *supra,* it has been amply demonstrated that the sanction promotes the retributive and, perhaps, the deterrent aims of punishment. Fifth, while an alternative purpose may rationally be connected and is assignable to it, as has been pointed out under Question 1, *supra,* the sanction is excessive in relation to the alternative purpose assigned.

Since, according to the tests established in *United States* v. *Brown* and *Kennedy* v. *Mendoza-Martinez,* 32 M. R. S. A. §575 is punitive, it follows that the sanction may not be applied "without affording the procedural safeguards guaranteed by the Fifth and Sixth Amendments", *Kennedy* v. *Mendoza-Martinez,* 372 U. S. at 164, and incorporated or absorbed into the Fourteenth Amendment. See, *e.g., Gideon* v. *Wainwright,* 372 U. S. 335; *Pointer* v. *Texas,* 380 U. S. 400. It is true, however, that the sanction of disqualification in this case appears to be based upon a decision that was rendered after a full judicial proceeding at which guilt was determined. It might, therefore, be unnecessary for a new, complete criminal proceeding to be provided before one in Appellant's position may be disqualified from an occupation. But this does not mean that the State has no obligation to provide some

form of additional and fair hearing before applying the penalty of disqualification, for:

> "The felon's trial adjudicated only the issue of his guilt or innocence of the crime alleged. It in no way considered either his moral character at the time or his fitness to exercise any of the rights which the civil disability laws later deny him. Thus the convicted felon has never been given a judicial hearing on the question whether his character is such that he should be forever kept from the polls or denied the opportunity to enter certain professions or occupations." *Cf.* Comment, *Civil Disabilities of Felons*, 53 VA. L. REV. 403, 421 (1967); see also, TASK FORCE REPORT: CORRECTIONS 90-92 (1967).

3. 32 M. R. S. A. §575, on its face, and as interpreted and applied in this case, violates the prohibition against *ex post facto* laws contained in Section 10 of Article I of the United States Constitution?

In *Hawker* v. *New York*, 170 U. S. 189, a state statute then in force made it a crime to practice medicine after conviction for a felony. The sole challenge made by the appellant was that the statute could not be applied to him because it was passed after his felony conviction, and, therefore, that application to him would render the statute an *ex post facto* law. With three Justices dissenting, the Court upheld the application of the statute. Similarly a plurality upheld the statute involved in *De Veau* v. *Braisted*, 363 U. S. 144, 160 against challenge that application of the statute to the appellant would render it an *ex post facto* law.

The classical definition of an *ex post facto* law was established by the Court in *Calder* v. *Bull,* 3 Dall. 386, 390 to include:

> "1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. *Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.* 4th. Every law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offense in order to convict the offender." (Emphasis supplied.)

There is a substantial question in this appeal whether application of 32 M. R. S. A. §575, to disqualify Appellant, three years after he completed service of his sentence for a felony of which he was convicted six years before passage of the statute, is an *ex post facto* law.

In *De Veau* v. *Braisted,* 363 U. S. 144, 160, Justice Frankfurter for the plurality wrote that:

> "The mark of an *ex post facto* law is the imposition of what can fairly be designated punishment for past acts. The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession."

Justice Frankfurter then concluded, with respect to the statute under review, that:

> "The proof is overwhelming that New York sought not to punish ex-felons, but to devise what was felt to be a much-needed scheme of regulation of the water-front, and for the effectuation of that scheme it became important whether individuals had previously been convicted of a felony." 363 U. S. at 160.

As already noted, no such legislative proof is present in this case. Furthermore, it is significant that the decisions both in *De Veau* v. *Braisted, supra,* and *Hawker* v. *New York,* 170 U. S. 189, were rendered before this Court decided *Kennedy* v. *Mendoza-Martinez,* 372 U. S. 144, 168-69 and *United States* v. *Brown,* 381 U. S. 437, 458, and re-evaluated its approach to the question of what constitutes punishment. Under the current view of punishment, discussed at length under Question 2, *supra,* it appears that Section 575 is "a law that charges the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed." *Calder* v. *Bull,* 3 Dall. 386, 390. See also, *Hawker* v. *New York,* 170 U. S. 189, 200-205 (Harlan, Peckham and McKenna, *JJ.*, dissenting).

CONCLUSION

As discussed above, examination of the recent decisions of this Court raises serious constitutional doubts as to the validity of 32 M. R. S. A. §575 which absolutely bars persons in Appellant's position from the occupation of collection agent. Involving a dangerous retroactive abridgment of the personal liberty to freely choose one's occupation, this case therefore presents substantial federal questions that merit the full consideration of this Court.

Respectfully submitted,

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June 1967

APPENDIX A

SUPREME JUDICIAL COURT OF MAINE

RUPERT WATSON d/b/a MAINE-WIDE ADJUSTERS,

—v.—

STATE OF MAINE COMMISSIONER OF BANKING.

Oct. 27, 1966.

Malcolm S. Stevenson, Bangor, David R. Downing, Bucksport, for plaintiff.

Jerome S. Matus, Asst. Atty. Gen., Augusta, for defendant.

Before WILLIAMSON, C. J., and
WEBBER, TAPLEY, MARDEN, RUDMAN,
and DUFRESNE, JJ.

MARDEN, *Justice.*

On report.

The factual background is as follows: During the period September, 1948 to January, 1960, plaintiff owned and operated a collection agency. In January, 1960, he was found guilty of embezzlement and executed a sentence in the Maine State Prison from which he was released in February of 1963. Upon his release, he renewed the operation of his collection agency. The 102nd Legislature (1965) passed "An Act regulating collection agencies" (Chapter

430 P. L. 1965), effective January 1, 1966, which is now 32 M. R. S. A. §§571-583 inclusive. By the terms of this Act a collection agency as therein defined (§571), and including a proprietorship so operating, with exclusions (§572), is required to procure an annual license (§573); supply upon request financial statements, file surety company bond and generally is subject to supervision of the State Bank Commissioner. By Section 575 no license is to be granted an applicant who has been convicted in the State or Federal Courts of listed crimes, including embezzlement.

In compliance with this Act, the plaintiff applied for a license, supported by the required financial statement and cash deposit as a bond, which application was denied on the basis of plaintiff's reference conviction.

Plaintiff then petitioned for injunctive relief against the enforcement of the statute, and for a declaratory judgment on the validity of the legislation. The case was reported.

The complaint, with amendments, attacks the constitutionality of the statute as being not a proper exercise of the police power of the State, but if it is, that it is discriminatory, that it constitutes an impairment of the obligation of contracts, that it violates constitutional due process, and that it is an *ex post facto* law.

Upon report the issues are expressed as four,—that the defendant's refusal to grant plaintiff a license was (1) the application of an *ex post facto* law, (2) the application of a law retrospectively which impaired the obligation of contracts, (3) deprivation of property without due process of law, and (4) the application of law that is discriminatory, arbitrary and denies plaintiff equal protection of the laws. Our consideration is confined to these issues.

Plaintiff, in his composite attack, challenges the law as exceeding the State's police power. The general power of the State to preserve and promote public welfare, even at the expense of private rights, but within constitutional limitations, and by means reasonably tending to correct some evil or promote some public interest, is basic. State v. Old Tavern Farms, Inc., 133 Me. 468, 470, 471, 180 A. 473, 101 A. L. R. 810. See also Dexter v. Blackden, 93 Me. 473, 484-485, 45 A. 525, citing Cooley on Constitutional Limitations. It is a matter of common knowledge that creditors solicit the aid of collection agencies only after they have exhausted the collection resources within their own organizations and not infrequently only after the claims are written off their books. By virtue of the fact that the creditor has largely given up the claims as realizable assets, their supervision of and interest in the agencies' activities is not lively. This may, and not infrequently does, open the way for the agency to indulge in collection practices and accounting procedures which in the public interest and welfare, including both the credit and debit communities, establish need for, and propriety of, regulation. The legislature was competent to declare the activity as one affecting the public welfare.

> "The wisdom, necessity or expediency of a legislative enactment is not subject to judicial review." Treffry v. Taylor (Wash. 1966) 408 P. 2d 269, [14] 273 (Regulation of Contractors)

See also Reynolds v. Louisiana Board of Alcoholic Beverage Control (1966) 248 La. 639, 181 So. 2d 377, [4] 380 (Regulation of liquor distributors); Ferguson v. Skrupa (Kan. 1963) 372 U. S. 726, 83 S. Ct. 1028, [2-5] 1301, 10

L. Ed. 2d 93 (debt adjusters); State ex rel. Clark v. Brown (1965) 1 Ohio St. 2d 121, 205 N. E. 2d 377, [3] 380 (budget counseling service); and in principle, Baxter v. Waterville Sewerage District, 146 Me. 211, 214, 79 A. 2d 585.

The extent to which regulation in the public interest has been held constitutional is indicated by the substantial list of enterprises so regulated, shown in 16A C. J. S. Constitutional Law §659 b., to which list others periodically have been added.[1]

> "The regulation and licensing of commercial and collection agencies has been upheld, for the most part, against various constitutional objections. Although no extensive line of cases has been developed, it seems clear that as a general matter the singling out of commercial or credit agencies as objects for the exercise of the police power represents a reasonable classification." Annot. 54 A. L. R. 2d 881 §2, 883.

See also Hankins v. Spaulding (1957) 78 Idaho 533, 307 P. 2d 222, and Meyers v. Matthews (1955) 270 Wis. 453, 71 N. W. 2d 368, 54 A. L. R. 2d 868.

Placing the collection business under the supervision of a state commission through a Credit and Collection Board (§583), requiring evidence from the agency bearing upon its "reputation, integrity, competence and net worth" (§573, ¶4), requiring the agency to supply surety bond "to safeguard the interests of the public" (§574), establishing qualifications for those proposing to engage in the busi-

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[1] Auctioneers, Collection Agencies, Commercial Divers, Debt Adjusting, Fortune Tellers, Landscape Architects, Laundries, Masseurs, Medical Service Corporations, Naturopaths, Pawn Brokers, Rooming Houses, TV and Radio Repairmen, and Watch Repairmen.

ness (§575), prohibiting practices which the legislature considered inimical to commercial and professional ethics (listed in §576), requiring access to the agency's business records (§580), and providing means for the orderly liquidation of an agency in default of its claimants (§581), are eminently appropriate and reasonable means toward public assurance that persons handling other's claims are trustworthy, that collection procedures will be kept within commercially and legally acceptable bounds, and that claims by forwarders and creditors will be protected.

Plaintiff aims his criticism grounded upon constitutional prohibitions,[2] at Sections 571, 572, and 575 only. These prohibitions will be considered seriatim.

Ex post facto issue

This statute is not an *ex post facto* law constitutionally prohibited. Such "(a) law is ex post facto (after the deed or fact,) when (1) it makes a criminal offense of what was innocent when done; or (2) it aggravates a crime, making it greater than it was when committed; or (3) it inflicts a punishment more severe than was prescribed at the time the crime was perpetrated; or (4) it alters the rules of evidence to the injury of the accused; or (5) it, in effect if not in purpose, deprives him of some protection to which he has become entitled. The expression relates solely to crimes and their punishment, and has no application to civil matters." In re John M. Stanley, 133 Me. 91, 93, 174

[2] "Impairment of Contracts" and "ex post facto law" under U. S. Constitution, Article I, Section 10; Maine Constitution Article , Section 11.

"Due Process," "equal protection" and "unjust discrimination" under U. S. Constitution in Amendment XIV, Section 1; and Maine Constitution in Article I, Section 6-A.

A. 93, affirmed in Stanley v. Public Utilities Commission, 295 U. S. 76, 55 S. Ct. 628, 79 L. Ed. 1311. See also Hawker v. People of State of New York (1898) 170 U. S. 189, 196, 18 S. Ct. 573, 42 L. Ed. 1002; Meffert v. State Board of Medical Registration and Examination (1903) 66 Kan. 710, 72 P. 247, 251, 1 L. R. A., N. S., 811 (bottom column 1); Page v. Watson (1938) 140 Fla. 536, 192 So. 205, [4] 210, 126 A. L. R. 249; McDonough v. Goodcell (1939) 13 Cal. 2d 741, 91 P. 2d 1035, [19, 20] 1041, 123 A. L. R. 1205; Frazier v. Goddard (D. C. Okl. 1945) 63 F. Supp. 696, [4] 698; Konigsberg v. State Bar of California (1961) 366 U. S. 36, 81 S. Ct. 997, [9, 10] 1005, 6 L. Ed. 2d 105; and Smith v. The State of California (9 CCA, 1964) 336 F. 2d 530, [6] 534.

The rationale is expressed in *Hawker*, supra, a leading case, 170 U. S. at page 200, 18 S. Ct. on page 577, where the majority of the court said:

> "The thought which runs through these cases and others of similar import which might be cited is that such legislation is not to be regarded as a mere imposition of additional penalty, but as prescribing the qualifications for the duties to be discharged and the position to be filled, and naming what is deemed to be, and what is in fact, appropriate evidence of such qualifications."

Impairment of Contract Issue

This issue is raised only by the implication that on January 1, 1966 plaintiff had contractual relations with clients which the requirement of license, denied him, impaired. The record does not establish that such contracts in fact existed, but, if so, the law is not unconstitutionally defec-

tive in this respect. See In re Guilford Water Company (1919) 118 Me. 367, 372, 108 A. 446, where appears "(t)he rule is general that every contract touching matters within the police power must be held to have been entered into with the distinct understanding that the continuing supremacy of the state, if exerted for the common good and welfare, can modify the contract when and as the benefit of that interest properly may require." Also Baxter v. Waterville Sewerage District, 146 Me. 211, 218, 79 A. 2d 585. This rule is reiterated and applied in American Budget Corp. v. Furman, 67 N. J. Super. 134, 170 A. 2d 63, [9] 69; affirmed by the court of last resort (1961) 36 N. J. 129, 175 A. 2d 622, against an attack on a statute in substance outlawing the business of debt adjusting.

The plaintiff, never having been licensed, can base no challenge of the statute upon the false premise that the relationship between the State and him, as a licentiate, is contractual, which contract the statute impairs. 33 Am. Jur., Licenses §21, and see Hughes v. State Board of Medical Examiners (1926) 162 Ga. 246, 134 S. E. 42, [4] 47.

"Due Process," "Equal Protection" *and* *"Unjust Discrimination" Issues*

There is case law in abundance recording unsuccessful attacks founded upon these constitutional issues upon licensing statutes. The majority in number of these cases arose by reason of the complainant's license having been revoked on account of disqualifying conduct.

The minority in number have arisen by virtue of the licensing board's denial of license because of disqualifying conduct. We consider that the constitutional issues here raised have equal application to each situation. The

constitutional validity of denying a license rests upon the same ground as the constitutional validity of revoking a previously granted license. In each case constitutional due process as to "hearing" is implicit.

The salient point of concern here is the statutory provision by which the disqualifying conduct is measured. Many cases turn upon disqualification expressed in general terms, the interpretation and application of which rests with the board of licensure.

Revocations: See as to medical doctors, "unprofessional conduct" (including by definition acts mala prohibitum or mala in se and mental incompetency) Hubbard v. Washington State Medical Disciplinary Board (1960) 55 Wash. 2d 546, 348 P. 2d 981; "gross immorality" Meffert v. State, supra (Kan. 1903); "misconduct" Ladrey v. Commission on Licensure to Practice The Healing Art in The District of Columbia (1958) 104 U. S. App. D. C. 239, 261 F. 2d 68; "conviction of crime involving moral turpitude" Hughes v. State Board of Medical Examiners (1926) 162 Ga. 246, 134 S. E. 42.

See as to dentists, "immoral or dishonorable conduct" South Carolina State Board of Dental Examiners v. Breeland (1946) 208 S. C. 469, 38 S. E. 2d 644, 167 A. L. R. 221; "moral turpitude" Brun v. Lazzell (1937) 172 Md. 314, 191 A. 240, 109 A. L. R. 1453.

See as to osteopath, "Unprofessional and dishonorable conduct" (including by definition, drug addiction, knowingly making false documents in connection with practice) Rose v. State Board of Registration for the Healing Arts (Mo. 1965) 397 S. W. 2d 570.

See as to druggists, "abuse of (professional) trust" Straight v. Crawford (1888) 73 Iowa 676, 35 N. W. 920.

See as to suspension of Attorney at Law, "commission of 'any act contrary to honesty, justice or good morals'" In re Morris (1965) 74 N. M. 679, 397 P. 2d 475; as to disbarment for lack of "good moral character" Sanborn v. Kimball (1875) 64 Me. 140; and Ex parte Wall (1882) 107 U. S. 265, 2 S. Ct. 569, 27 L. Ed. 552.

Denials of license: Requirement that applicant be without "infirmity of body or mind," and "criminal record" to be considered Kaufman v. Taxicab Bureau, Baltimore City Police Department (1964—Applicant for taxi license) 236 Md. 476, 204 A. 2d 521; conviction of misdemeanor for dispensing drugs without prescription, Thomas v. Board of Pharmacy (1910—druggist) 152 N. C. 373, 67 S. E. 925; requirement of "good moral character" and fitness and propriety to engage in the proposed business, McDonough v. Goodcell (1939—bail bonding) 13 Cal. 2d 741, 91 P. 2d 1035, 123 A. L. R. 1205; requirement of "good moral character" and non-advocacy of violent overthrow of state or federal government, Konigsberg v. State Bar of California (1961—applicant for admission to bar) 366 U. S. 36, 81 S. Ct. 997, 6 L. Ed. 2d 105.

Our statute differs from those involved in the cases just cited, in that the responsibility of the licensing board to determine quasi-judicially whether or not the alleged conduct falls within the statutory proscription is substantially obviated. By express terms of Section 575:

"No license shall be granted to an applicant * * * if such applicant * * *, has been convicted * * * of the crime of * * *, embezzlement, * * *, of which the record of conviction * * * shall be conclusive evidence."

This expression of disqualification is even more specific than that in those cases in which a license has been revoked for conviction of a "felony." Page v. Watson (1938—physician) 140 Fla. 536, 192 So. 205, 126 A. L. R. 249; United States v. Goodloe (D. C. of D. C. 1964—physician) 228 F. Supp. 164; and conviction of a "crime" Munkley v. Hoyt et al. (1901—pharmacist) 179 Mass. 108, 60 N. E. 413. Of particular significance is the holding in DeVeau v. Braisted (1960) 363 U. S. 144, 80 S. Ct. 1146, 4 L. Ed. 2d 1109, in which the State of New York disqualified ex-felons from waterfront union offices, and in upholding the statute, plurality of the Court said in [3] at page 1154:

> "Barring convicted felons from certain employments is a familiar legislative device to insure against corruption in specified, vital areas. Federal law has frequently and of old utilized this type of disqualification.[4] * * * State provisions disqualifying convicted felons from certain employments important to the public interest also have a long history. See, e.g., Hawker v. People of State of New York, 170 U. S. 189, 18 S. Ct. 573, 79 L. Ed. 1311, * * *. The question in each case (page 1155) where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession. See Hawker * * *."

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[4] 5 U. S. C. A. Executive Departments and Government Officers and Employees: Persons convicted of stated offenses "prior to, on

Paraphrasing *DeVeau* from page 1155 of 80 S. Ct., "No doubt is justified regarding the legislative purpose" of the Maine statute. The law is "not to punish ex-felons, but to devise what was felt to be" appropriate regulation for an activity in the public interest. The rationale of *DeVeau* was later applied in Flemming v. Nestor, 363 U. S. 603, 80 S. Ct. 1367, 4 L. Ed. 2d 1435.

While in general we have equated the principle concerned in revocation of a license with those concerned in denial of a license, plaintiff urges that his "disqualification" occurred prior to the effective date of the licensing

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or after September 1, 1954" (effective date of the statute) disqualify for annuity or retirement pay, §2282.

8 U. S. C. A. Aliens and Nationality: Loss of nationality upon conviction by court martial of desertion in time of war, or treason, inter alia, §1484.

10 U. S. C. A. Armed Forces: No felon may be enlisted or mustered into the Army, §3253, or Air Force, §8253.

18 U. S. C. A. Crimes and Criminal Procedure: Numerous instances of disqualification from holding "any office of honor, trust, or profit under the United States" by virtue of officer or employee accepting bribe, §202; same as to Members of Congress, Judicial Officers and Judges, §§205-207; same as to officer or Members of Congress for accepting pay for contract procurement, §216; or where compensation is received for participating on behalf of interests in conflict with that of the United States, §281; or practicing before a Court of claims, §282; or any officer of the Armed Forces installing troops at any place of general or special election, §592. Any collecting or disbursing officer of the United States trading in public property is disqualified for "holding any office under the United States", §1901; same as to person concealing, removing, etc., public records, §2071; same as to one owing allegiance to the United States who "adheres" to an enemy of the United States, §2381. Whoever promotes insubordination etc., in the Armed Forces is disqualified for employment by the United States for a period of 5 years, §2387.

28 U. S. C. A. Judiciary: Convicted felons inter alia disqualified for federal jury service, §1861.

38 U. S. C. A. Veterans Benefits: Anyone convicted of subversive activity is disqualified for veterans benefits, §3505.

statute and that that is a fact of controlling significance, apart from its claimed *ex post facto nature*. Not so. The statute speaks in the present and only declares that past conduct is to be considered in determining present fitness for engagement in the proposed activity, a praesenti or in futuro. See under "denials of license" McDonough v. Goodcell (1939), 13 Cal. 2d 741, 91 P. 2d 1035, [19, 20] 1041, 123 A. L. R. 1205 and *Hawker*, supra, 170 U. S. at page 200, 18 S. Ct. 573, 42 L. Ed. 1002. An attack upon an "habitual criminal" statute which was applied to a conviction occurring before the statute became effective, upon constitutional grounds, was summarily held to be without merit in State v. Chamineak (Mo. 1941) 343 S. W. 2d 153, [20] 163, and Lawrence v. Commonwealth (1965) 206 Va. 51, 141 S. E. 2d 735, [1] 736. A challenge to a Federal Firearms Act which prohibited one previously convicted of a crime of violence to possess firearms was upheld in Cases v. U. S. (1 CCA, 1942) 131 F. 2d 916, [5, 6] 921 where the Court said legality of present conduct may depend upon past behavior "even behavior before the passage of the regulatory act."

Attacks upon identical grounds by complainants who purport to engage in business involving the financial community have been no more successful. See American Budget Corp. v. Furman (1961—debt adjusting) 67 N. J. Super. 134, 170 A. 2d 63, [9] 69, affirmed by Court of last resort (1961) 36 N. J. 129, 175 A. 2d 622; Ferguson v. Skrupa (Kan. 1963—debt adjusting) 372 U. S. 726, 83 S. Ct. 1028, 10 L. Ed. 2d 93; State ex rel Clark v. Brown (1965—budget counseling) 1 Ohio St. 2d 121, 205 N. E. 2d 377; Hankins v. Spaulding (1957—collection agency) 78 Idaho 533, 307 P. 2d 222.

Examination of the cases cited negatives the validity of plaintiff's constitutional contentions, including that which labels our statute as "unjustly discriminating." In this respect the principles reviewed in Associated Hospital Service of Maine v. Mahoney et al., 161 Me. 391, 409, 213 A. 2d 712, apply and support the "collection agency" classification as valid.

Our statute is valid, and injunctive relief is denied.

So ordered.

APPENDIX B

PROFESSIONS AND OCCUPATIONS

Chapter 10

COLLECTION AGENCIES

(1965, c. 430, §1 eff. Jan. 1966)

§571. Definitions

The following words and terms, as used in this chapter, shall be construed as follows:

1. *Collection agency.* "Collection agency" means and includes any person engaged in the business of collecting for others any account, bill or other indebtedness. It includes persons who furnish collection systems carrying a name which simulates the name of a collection agency and who supply forms or form letters to be used by the creditor even though such forms direct the debtor to make payments directly to the creditor rather than to such fictitious agency.

2. *Commissioner.* "Commissioner" means the Bank Commissioner.

3. *Person.* "Person" means and includes individuals, partnerships, associations or corporations.

§572. Exclusions

The term "collection agency" shall not include persons whose collection activities are confined to and are directly

related to the operation of a business other than that of a collection agency such as but not limited to banks, savings banks, credit unions, credit union leagues, real estate brokers, public officers or persons acting under order of a court, lawyers, trust companies, building and loan associations, savings and loan associations.

§573. Licenses

1. *Licenses required.* Except as hereinafter provided, no person shall conduct within this State a collection agency or engage within this State in the business of collecting claims for others as defined in this chapter, without having first applied for and obtained a license.

2. *Penalty.* Any person who shall carry on business as a collection agency without first having obtained a license pursuant to this section, or who shall carry on such business after the revocation, suspension or expiration of any license shall be guilty of a misdemeanor and punishable by a fine not exceeding $500 or by imprisonment not exceeding 6 months, or by both.

3. *Licenses.* Licenses granted by the commissioner under this section shall be for a period of one year from the first day of January following the effective date of this Act, and annually thereafter such license may be renewed so long as the commissioner regards the business as responsible and safe, but in all cases to terminate unless renewed on the first day of the succeeding January. Each license shall plainly state the name and business address of the licensee and shall be posted in a conspicuous place in the office where the business is transacted. The fee for each license shall be $100. If the licensee desires to carry on

business in more than one place within the State, he shall procure a license for each place where the business is to be conducted.

4. *Commissioner.* The commissioner may require such financial statements and references of all applicants for a license as he deems necessary; and may make or cause to be made an independent investigation concerning the applicant's reputation, integrity, competence and net worth. Such investigation may cover all managerial personnel employed by or associated with the applicant.

5. *Application for license.* Every application for a license shall be acted upon promptly by the commissioner. If the application shall comply in form and substance with the provisions of this chapter and the rules and regulations promulgated thereunder and the commissioner shall find that the applicant is qualified under this chapter, the commissioner shall issue a license forthwith. If the application shall not be sufficient in form or substance, the commissioner shall reject it and notify the applicant of the manner in which it is deficient. Such rejection shall be without prejudice to the filing of a new application. If the commissioner shall find that the applicant is not qualified under this chapter, he shall reject the application and shall give the applicant written notice of such rejection and the reasons therefor. In addition, any foreign business, incorporated or unincorporated, before obtaining such license in order to engage in the business of a collection agency within the State of Maine, must furnish the commissioner with:

A. A certified copy of its charter and bylaws;

B. A power of attorney appointing the commissioner to be the true and lawful attorney of such business in and for this State, upon whom all lawful process in an action or proceeding against the business may be served with the same effect as if the business existed in this State. Said power of attorney shall stipulate and agree on the part of the business that any lawful process against the company which is served on said attorney shall be the same in legal force and validity as if served on the business itself, and that the authority shall continue in force irrevocable so long as any liability remains outstanding against the business in this State. A certificate of such appointment, duly certified and authenticated shall be filed in the office of the commissioner and copy certified by him shall be received in evidence in all courts of this State.

§574. Bond

The commissioner shall require each licensee to file and maintain in force a surety bond, in a form to be prescribed by the commissioner and acceptable to him, and in such sum as he may deem reasonably necessary, to safeguard the interests of the public. The bond may be cancelled by the surety thereon by giving 30 days' notice to the Bank Commissioner but such cancellation shall not in any manner affect the liability of the surety as to anything occurring prior thereto.

§575. Prior convictions as disqualifications

No license shall be granted to any applicant if an individual or to any partnership or corporate applicant if such applicant or any partner of a partnership applicant

or officer or director of a corporate applicant, or employee of the foregoing, has been convicted in any state or federal court of the crime of forgery, fraud, obtaining money under false pretenses, embezzlement, extortion, larceny, burglary, breaking and entering, robbery, criminal conspiracy to defraud, or bribery, of which the record of conviction or a copy certified by the clerk or judge of the court shall be conclusive evidence. No license shall be granted to any lawyer whose license to practice law has been suspended or revoked, during the effective period of such suspension or revocation.

§576. Prohibited practices

No collection agency shall: Threaten to bring legal action or list the name of the lawyer; use or employ justices of the peace, constables, sheriffs, or any other officer authorized to serve legal papers in connection with the collection of a claim; use or threaten to use physical violence in connection with the collection of claims; furnish legal advice or otherwise engage in the practice of law or represent that it is competent to do so, or institute judicial proceedings on behalf of others; communicate with debtors in the name of a lawyer or upon the stationary of a lawyer, or prepare any forms or instruments which only lawyers are authorized to prepare; solicit, purchase or receive assignments of claims for the purpose of collection, or institute suits thereon in any court; use instruments which simulate the form and appearance of judicial process; exercise authority on behalf of a creditor to employ the services of lawyers unless the creditor has specifically authorized the agency in writing to do so and the agency's course of conduct is at all times consistent with the true relation-

ship of attorney and client between the lawyer and the creditor; demand or obtain in any manner a share of the compensation for services performed by a lawyer in collecting a claim; publish or cause to be published any list of debtors except for credit reporting purposes or threaten to do so; use "shame cards," "shame automobiles," or similar devices, methods of intimidation or methods contrary to postal regulations to collect accounts; refuse to return any claim or claims upon written request of the creditor, claimant or forwarder after the tender of such amounts, if any, as may be due and owing to the agency; advertise or threaten to advertise for sale any claim as a means of forcing payment thereof, unless such agency is acting as the assignee for the benefit of creditors or acting under an order of court; refuse or intentionally fail to account to its clients for all money collected within 60 days from the last day of the month in which the same is collected; refuse or intentionally fail to return to the creditor all valuable papers deposited with a claim when such claim is returned; refuse or fail to furnish at intervals of not less than 90 days, upon the written request of the claimant or forwarder, a written report upon claims received from such claimant or forwarder; operate under a name or in a manner which implies that such agency is a branch of or associated with any department of the Federal Government or of any state or municipal government, or use any seal, insignia, envelope or other format which simulates that of any government department or agency; commingle money collected for a customer with the agency's own funds or use any part of a customer's money in the conduct of the agency's business; or share quarters or office space, or have a common waiting room with a practicing lawyer; make repeated or harassing communications to employers,

or make collect telephone calls by subterfuge; engage in the business of lending money to any person, or contact any person for the purpose of securing a loan for any person with which to pay any claim left with it for collection, or recommend or suggest any person or persons as a source of funds to pay any such claim; collect or attempt to collect from any person an amount in excess of the amount legally due to the creditor.

§577. Application in case of pretended purchase or assignment

This chapter shall apply to any person who, by any device, subterfuge or pretense, makes a pretended purchase or takes a pretended assignment of accounts from any other person for the purpose of evading this chapter.

§578. Investigation, suspension and revocation of licenses

The commissioner may investigate the collection records of a licensee and for that purpose the commissioner shall have free access to the books and records of a licensee relating thereto. If a licensee violates any provisions of this chapter, or any administrative rules issued pursuant to this chapter, or fails to maintain its financial condition sufficient to qualify for a license on an original application, the commissioner may, after notice and hearing in accordance with the laws of this State governing proceedings before the Bank Commissioner, under Title 9, revoke a license or suspend such license for such period as he may deem proper. Any such revocation or suspension may be reviewed by the Credit and Collection Board upon request of the licensee made within 30 days of the revocation or suspension. Any appeal from the decision of the board

may be taken in accordance with Title 5, chapters 305 and 307.

§579. Appeals

1. *Event of rejection.* In the event of the rejection of an application for a license or the renewal thereof filed under this chapter or of the suspension or revocation of a license granted under this chapter, the applicant or licensee may, within 30 days after receipt of notice of such rejection, suspension or revocation, file an appeal and thereafter prosecute the appeal in accordance with the statutes governing appeal from, or review of, decisions of the Bank Commissioner.

2. *Filing of appeal.* The filing of an appeal from an order of the commissioner rejecting an application for a license by a collection agency engaged in business as of the effective date of this Act, or rejecting an application for the renewal of a license, or suspension or revoking a license within 60 days after the date of such order, shall operate as a supersedeas which shall continue pending final determination of such appeal.

§580. Reports and records

1. *Financial statements.* The commissioner may at any time require a licensee to submit to the department a verified financial statement for examination by the commissioner so that he may determine whether the licensee is financially responsible to carry on a collection agency business within the intents and purposes of this chapter.

2. *Books and records.* Each licensee shall maintain a place of business in this State, and the commissioner shall

require the licensee to keep such books and records in his place of business in this State as will enable the commissioner to determine whether the provisions of this chapter are being complied with. Every such licensee shall preserve the records of final entry used in such business for a period of 6 years after final remittance is made on any account placed with the licensee for collection or after any account has been returned to the claimant on which one or more payments have been made.

§581. Delinquent collection agencies

1. *Insolvency.* If the commissioner shall determine that a licensee is involvent or that he has collected accounts but has failed to remit money due to any claimant or forwarder within 60 days from the end of the month in which collection was made, or when the license of a collection agency has expired or terminated for any reason whatsoever, the commissioner, if he shall determine such action necessary to protect the public interest, may apply to the Superior Court within and for the county in which the main office of such agency is located for an order authorizing him to take possession of the assets and the books and records of the licensee for the purpose of liquidating its business and for such other relief as the nature of the case and the interest of the claimants or forwarders may require. The court, after citing the licensee to show cause why the commissioner should not be authorized to take possession of the assets and books of account and records for the purpose of liquidating the business of the licensee, and after hearing the allegations and proofs of the parties and determining the facts, may upon the merits dismiss the application or, if it shall find such action necessary

for the protection of the public, issue its order authorizing the commissioner to take possession of the said books and records and to liquidate the business and granting such other relief as it may deem necessary under the circumstances.

2. *Powers and duties.* In every case where the court shall issue an order authorizing the commissioner to take possession of the said books and records and to liquidate the business of a licensee, the commissioner shall be vested with all of the powers, duties, authority and responsibility of a receiver, and without limiting the generality of the foregoing and subject to the approval of the court;

A. The liquidation of the business shall be made by and under the supervision of the commissioner either in the name of the commissioner or in the name of the licensee, and the commissioner or his successor shall be vested with title to all of the assets including the proceeds of the financial security which has been filed with the commissioner and the proceeds of any and all money paid direct to the claimant or forwarder by any debtor prior to the date of the order. Money paid to the licensee or to the commissioner after the date of the order shall be disposed of by the commissioner.

B. The commissioner for the purpose of collection or liquidation may sell, assign, convey and transfer or approve the sale, assignment, conveyance and transfer of the assets of such collection agency under such terms and conditions as the commissioner may deem best for the best interests of the claimants of such collection agency.

C. The commissioner shall cause notice to be given by advertisement in such newspapers as he may direct weekly for 4 consecutive weeks after the issue of the order authorizing him to take possession of the assets of the collection agency, calling on all persons who may have claims against such licensee to bring the same to the commissioner and make legal proof thereof at a place and within a time to be therein specified. The commissioner shall mail a similar notice to all persons whose names appear as claimants or forwarders upon the books and records of the licensee or as may appear in the records of the commissioner. Any claimant or forwarder whose portion of the collection or collections has not been properly remitted shall file a claim which shall be allowed for the amount actually due the claimant or forwarder after deduction of commission or fee that may be due and owing the licensee. If the commissioner doubts the justice and validity of any claim, he may reject the same and serve notice of such rejection upon the claimant either by mail or personally. An affidavit of service of such notice which shall be prima facie evidence thereof shall be filed with the commissioner. The claimant may within 30 days after receipt of notice of rejection file a petition in the court in which the proceedings are pending to establish his claim or claims. Claims presented after the expiration of the time and fixed in the notice to the claimants or forwarders shall be entitled to receive only liquidating dividends declared after presentation unless otherwise ordered by the court. The court may fix a date after which all claimants may be barred.

D. Whenever the commissioner shall have paid to each and every claimant or forwarder of such collec-

tion agency whose claims as such claimant or forwarder have been duly approved and allowed the full amount of such claims and shall have made proper provisions for unclaimed and unpaid collections and shall have paid all the expenses of the liquidation, he shall distribute the remaining assets exclusive of the proceeds of the financial security for the benefit of the general creditors. Any amount remaining after all claimants and forwarders and general creditors have been paid in full shall be turned over to the licensee.

E. All accounts and valuable papers given to the agency by the claimant or forwarders in possession of the commissioner pertaining to accounts placed with the agency for collection shall be returned to the claimant or forwarder by the commissioner within 30 days after verification of the claim has been made.

F. Nothing herein contained shall preclude a creditor of a collection agency from prosecuting any and all legal actions and pursuing any and all remedies afforded him by the laws of this State for collection of debts until such time as the commissioner shall take possession of the collection agency under this section.

§582. Rule making power

The commissioner may make such reasonable rules and regulations, not inconsistent with this chapter, pertaining to the operation of the business of licensees as he may deem necessary to safeguard the interest of the public. Such rules and regulations shall be adopted in the manner prescribed in Title 9, section 6, subsection 4. The Credit and Collection Board shall perform the functions and enjoy the

privileges of the advisory committee referred to in that section.

§583. Credit and Collection Board

The commissioner shall appoint a Credit and Collection Board, with each member to serve a term of 3 years from date of appointment, and such board shall have power, jurisdiction and authority to make recommendations to the Department of Banks and Banking relative to collection agencies, their administration and supervision, and to investigate the conditions and ascertain the facts with reference to the collection of accounts and other matters of a particular collection agency when the license of a collection agency has been revoked or suspended by the commissioner. The Credit and Collection Board will be composed of the commissioner and 4 individuals engaged in the collection business in the State and subject to this law. The Credit and Collection Board shall receive no compensation for their services but may be reimbursed for their actual and necessary traveling expenses. Such expenses shall be audited and paid and charged to the Department of Banks and Banking for the administration of this chapter.

(Letterhead of the State of Maine,
Department of State, Augusta, Maine 04330)

June 13, 1967

Professor Sanford J. Rosen
University of Maryland Law School
500 West Baltimore Street
Baltimore, Md. 21201

Dear Professor Rosen:

This is to advise you that on January 10, 1967 a Mr. Rupert Watson filed a petition for pardon with this Department.

The hearing before the Governor and Executive Council took place on April 5, 1967 and on April 7, 1967 the Governor and Council denied his petition for pardon.

Yours very truly,

/s/ STANLEY F. HANSON, JR.
STANLEY F. HANSON, JR.
Deputy Secretary of State

d

STATE OF MAINE

DEPARTMENT OF STATE

I, JOSEPH T. EDGAR, Secretary of State, certify that the paper to which this is attached, is a true copy from the records of this office.

IN TESTIMONY WHEREOF, I have caused the Great Seal of the State to be hereunto affixed. GIVEN under my hand at Augusta, this thirteenth day of June in the year of our Lord one thousand nine hundred and sixty-seven and in the one hundred and ninety-first year of the Independence of the United States of America.

/s/ JOSEPH T. EDGAR
Secretary of State

(SEAL)

Report #23

STATE OF MAINE

In Council, April 5, 1967

In re: Petition for Pardon of
RUPERT WATSON of Brewer, Maine

The Governor recommended that pardon be denied.

The above recommendation was sustained by the Council, the vote being unanimous.

/s/ Signature illegible
Chairman

Attest: /s/ JOSEPH T. EDGAR, Secretary of State

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In the

Supreme Court of the United States

OCTOBER TERM, 1967

No. 332

RUPERT WATSON
d/b/a MAINE WIDE ADJUSTERS
APPELLANT

v.

STATE OF MAINE BANK COMMISSIONER
APPELLEE

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

MOTION TO DISMISS

JAMES S. ERWIN
Attorney General

GEORGE C. WEST
Deputy Attorney General
STATE HOUSE
AUGUSTA, MAINE

JEROME S. MATUS
Assistant Attorney General

INDEX

	Page
MOTION TO DISMISS	1
Statement	1
Argument	4
I. This Appeal Has Not Been Taken in Conformity with the Revised Rules of This Court	4
II. There Is No Substantial Federal Question	6
A. 32 M.R.S.A. § 575, on Its Face, and as Interpreted and Applied in This Case, Does Not Violate Section 1 of the Fourteenth Amendment to the United States Constitution	6
B. 32 M.R.S.A. § 575, on Its Face, and as Interpreted and Applied in This Case, Does Not Violate the Prohibition Against ex post facto Laws Contained in Section 10, Article I of the United States Constitution	10
III. The Decision of the Supreme Judicial Court of Maine Was Correctly Decided	12
Conclusion	15

Citations

CASES:	
Calder v. Bull, 3 Dall. 386	11, 13
Cases v. United States, 131 F. 2d 916 (1st Cir. 1942)	13
Day Brite Lighting Inc. v. Missouri, 342 U. S. 421	10
DeVeau v. Braisted, 363 U. S. 144	6, 9, 10, 11, 12, 14, 15

Flemming v. Nestor, 363 U. S. 603 11
Fergeson v. Skrupra, 372 U. S. 726 10
Hankins v. Spaulding,
78 Idaho 533, 307 P. 2d 222 (1957) 11
Hawker v. New York,
170 U. S. 189 ..... 9, 11, 12, 14, 15
Head v. New Mexico Board, 374 U. S. 424 5
In Re Stanley, 133 Me. 91, 174 A. 93 (1934) 13
Myers v. Mathews,
270 Wis. 453, 71 N.W. 2d 368 (1955) 11
Orr v. Gilman, 183 U. S. 278 11
Pittsburg Towing Co. v. Mississippi Valley Barge Line Co., et al., 385 U. S. 32 5
Schware v. Board of Bar Examiners, 353 U. S. 232 8
Stanley v. Public Utilities Commission,
294 U. S. 76 13
Williams v. Lee Optical Co., 348 U. S. 483 10
Zucht v. King, 260 U. S. 174 12

STATUTES:

32 M.R.S.A. § 575 7
New York Laws, 1953, cc. 882, 883, § 8 7

MISCELLANEOUS:

Task Force: Corrections 91 (1965) 8

In the

Supreme Court of the United States

OCTOBER TERM, 1967

No. 332

RUPERT WATSON
d/b/a MAINE WIDE ADJUSTERS

APPELLANT

v.

STATE OF MAINE BANK COMMISSIONER

APPELLEE

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

MOTION TO DISMISS

Appellee in the above-entitled case moves to dismiss the appeal on the grounds that the appeal from the decision below is not taken in conformity with the Revised Rules of the Supreme Court of the United States, that no substantial Federal question is presented, and that the decision below is clearly correct.

STATEMENT

The 102nd State of Maine Legislature (1965) passed "An Act regulating collection agencies" (Chapter 430, Public Laws of 1965) effective January 1, 1966, which is now 32 M.R.S.A. §§ 571-583 (1966 pocket parts) inclusive.

The appellant from September of 1948 to January, 1960 owned and operated a collection agency. In January, 1960, he was found guilty of embezzlement and served a sentence in the Maine State Prison from which he was released in February 1963.

Pursuant to provisions of the reference Act, the appellant applied for a license as a collection agency, filed a required financial statement and a cash deposit in lieu of a surety bond with the State of Maine Banking Commissioner, the appellee here.

Section 575 of the reference Act requires the State of Maine Banking Commissioner to refuse to grant a license to an applicant who has been convicted in a Federal or State Court of any of certain enumerated crimes, including the crime of embezzlement. *Infra*, p. 7.

The State of Maine Banking Commissioner following the dictates of 32 M.R.S.A. § 575 refused to grant a collection agency license to the appellant. The cash deposit was returned to the appellant.

The appellant petitioned for a declaratory judgment as to the validity of the reference Act and sought injunctive relief against its enforcement. The case was reported to the Supreme Judicial Court of the State of Maine.

The case on report was limited to four issues of whether or not section 575 of the reference Act was in violation of provisions of the United States and State of Maine Constitutions. The State of Maine Banking Commissioner's refusal to grant a collection agency license to the appellant was questioned on grounds that the refusal to grant was (1) the application of *ex post facto* law, (2) the application of a law retrospectively which impaired the obligation of contracts, (3) deprivation of property without due process of law, and (4) the application of a law that was discriminatory, arbitrary, and denies the appellant equal protection of the law.

The Supreme Judicial Court of Maine in a unanimous decision and opinion rendered on October 27, 1966, entered on October 28, 1966, and reported in Me., 223 A. 2d 834 (1966) negated all the appellant's constitutional contentions, held the statute valid, and denied injunctive relief.

The Notice of Appeal to this Court (Motion to Dismiss, Appendix A, p. 17) dated January 26, 1967, presents two questions as follows:

a. "Whether 32 M.R.S.A. § 575, on its face, and as interpreted and applied in this case, violates Amendment XIV, Section 1 of the United States Constitution, in that it effects a deprivation of a liberty and property without due process of law.

b. "Whether the foregoing Statute, on its face, and as interpreted and applied in this case, is an unconstitutional deprivation of liberty and property, without due process of law, in that it establishes a permanent life-long bar to Appellant's pursuit of a lawful occupation, solely because of a prior criminal conviction, and fails to provide any opportunity to attempt to prove rehabilitation and fitness."

Appellant, pursuant to the provisions of Rule 13 (1) of this Court, was granted (by Chief Justice Robert B. Williamson of the Supreme Judicial Court of Maine) an extension on March 28, 1967 until May 12, 1967 for filing his jurisdictional statement with this Court. (Motion to Dismiss, Appendix B, p. 19)

On May 11, 1967, a further extension of 45 days for filing his jurisdictional statement was granted by Chief Justice Williamson. (Motion to Dismiss, Appendix C, p. 21).

The case was docketed with this Court on July 3, 1967.

The Jurisdictional Statement poses three questions, two of which relate to Section 1 of the Fourteenth Amendment to the United States Constitution, the

third question relates to Article I, § 10 of the United States Constitution and is an *ex post facto* issue. (Jurisdictional Statement, pp. 3, 4)

Argument

I

This Appeal Has Not Been Taken in Conformity with the Revised Rules of this Court.

Appellant on March 28, 1967 was granted an extension until May 12, 1967 for the filing of a jurisdictional statement with this Court by order of Robert B. Williamson, Chief Justice of the Supreme Judicial Court of Maine. (Motion to Dismiss, Appendix B, p. 19)

On May 11, 1967, an additional extension of 45 days for the filing of the jurisdictional statement was granted by Chief Justice Williamson (Motion to Dismiss, Appendix C, p. 21) Hence the last day for filing was June 26, 1967 provided there was no further granting of an additional extension for filing.

The enlargements of time for filing the jurisdictional statement with this Court were properly granted under the provisions of Rule 13 (1) of the Revised Rules of this Court which permits a Judge of the Court in which the notice of appeal is filed in his discretion to enlarge the time for docketing the case. Appellee did not oppose the granting of the two extensions. No further enlargements of time for docketing this case have been granted.

As a result of the two extensions properly taken, appellant had a five-month period from January 26, 1967, the date of the filing of the notice of his appeal with the Supreme Judicial Court of Maine, until June 26, 1967 to docket the case and file a record with the Clerk of this Court. This case was not docketed until July 3, 1967. The docketing was untimely. An untimely docketing of an appeal beyond the time fixed by Rule 13 (1) of this Court is sufficient reason for dismissal

of an appeal. *Pittsburg Towing Co. v. Mississippi Valley Barge Line Co., et al.*, 385 U. S. 32 (November 7, 1966), BLACK, J. dissenting.

Rule 16 (1) (a) of this Court provides in part:

"1. * * *

"(a) The court will receive a motion to dismiss any appeal on the ground that the appeal is not within the jurisdiction of this court because not taken in conformity to statute or to these rules."

Although the appellant in his jurisdictional statement (Jurisdictional Statement, p. 23) contends that 32 M.R.S.A. § 575, on its face, and as interpreted and applied in this case, violates the prohibition against *ex post facto* laws contained in section 10 of Article I of the United States Constitution, this contention was not reserved in the questions posed in the notice of appeal or fairly comprised therein. (Motion to Dismiss, Appendix A, p. 17)

Rule 10 (2) (c) of the Revised Rules of this Court provides in part:

"(c) . . . The statement of a question will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the notice of appeal or fairly comprised therein will be considered by the Court. . . . A failure to comply with these requirements will be a sufficient reason for dismissing the appeal."

This Court has applied Rule 10 (2) (c) of this Court in disposing of an issue not set forth in the notice of appeal. *Head v. New Mexico Board*, 374 U. S. 424, 433, n. 12. In *Head v. New Mexico Board*, the argument was not made to the State Court nor was it reserved in the notice of appeal to this Court. In the case at bar, the *ex post facto* issue was considered and decided by the Supreme Judicial Court of Maine, but it was not reserved in the notice of appeal to this Court. (Motion

to Dismiss, Appendix A, p. 17) It is submitted that argument below does not erode the force of Rule 10 (2) (c) which requires that "only the questions set forth in the notice of appeal or fairly comprised therein will be considered by the Court."

II

There Is No Substantial Federal Question.

A. 32 M.R.S.A. § 575, ON ITS FACE, AND AS INTERPRETED AND APPLIED IN THIS CASE, DOES NOT VIOLATE SECTION I OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The 1960 case of *DeVeau v. Braisted*, 363 U. S. 144, Mr. Justice Frankfurter writing the opinion for the Court (Warren, C. J., Douglas, J. and Black, J. dissenting on other grounds), held that section 8 of the New York Waterfront Commission Act of 1963, disqualifying from holding office in any waterfront labor organization any person who has been convicted of a felony, and had not subsequently been pardoned or had his disability removed by a certificate of good conduct from the Board of Parole, does not violate the due process clause of the Fourteenth Amendment. 363 at 144. The appellant had been convicted of the crime of grand larceny in 1920, 33 years prior to the passing of the New York Waterfront Commission Act of 1963, and 36 years prior to the prosecution of the action against him under said statute. That statute provides in pertinent part:

"No person shall solicit, collect, or receive any dues, assessments, levies, fines, or contributions within the state from employees registered or licensed pursuant to the provisions of this act [pier superintendents, supervising agents, longshoremen and port watchmen] for or on behalf

> of any labor organization representing any such employees, if any officer or agent or such organization has been convicted by a court of the United States or any state or territory thereof, of *a felony* unless he has been subsequently pardoned therefor by the Governor or other authority of the state jurisdiction in which such conviction was had or has received a certificate of good conduct from the Board of Parole pursuant to the provisions of the executive law to remove the disability. New York Waterfront Commission Act of 1953, New York Laws 1953, cc. 882, 883, § 8. (Emphasis supplied)" 363 U. S. at 145.

This statute was upheld as not violating the due process clause of the Fourteenth Amendment on its face or as applied to appellant.

It is noteworthy that the Maine statute, 32 M.R.S.A. § 575, is more succinct, and imposes a much less onerous burden on the license applicants than the New York statute approved by this Court in *DeVeau*.

> "No license shall be granted to any applicant if an individual or to any partnership or corporate applicant if such applicant or any partner of a partnership applicant or officer or director of a corporate applicant, or employee of the foregoing, has been convicted in any state or federal court of the crime of forgery, fraud, obtaining money under false pretenses, embezzlement, extortion, larceny, burglary, breaking and entering, robbery, criminal conspiracy to defraud, or bribery, of which the record of conviction or a copy certified by the clerk or judge of the court shall be conclusive evidence. No license shall be granted to any lawyer whose license to practice law has been suspended or revoked, during the effective period of such suspension or revocation." *32 M.R.S.A. § 575.*

The Maine statute enumerates specific crimes which will disqualify an applicant for a license.[1] Other offenses will not affect one in his business pursuits. Moreover, it is clear that the crimes enumerated in the Maine statute are those which would cast serious doubt on the trustworthiness of one who is involved in the handling of money in a collection business. It cannot seriously be argued that one mishandling money to the extent of a conviction for embezzlement should continue in that pursuit.[2] A man with such propensities as evidenced by his conviction should simply not be involved in a business whose inherent nature is the collection and responsible care of money.[3] Indeed, this is the obvious intent of the Legislature in framing 32 M.R.S.A. § 575. Certainly, the appellant in this case is presently

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[1] The provisions of 32 M.R.S.A. § 575 are in accord with the general recommendations of the Task Force on Corrections of the President's Committee on Law Enforcement and Administration of Justice in regard to licenses for occupations.

> "The legislature might specify particular convictions as grounds for disqualification, leaving it to a court or agency to determine the merit of each case." *Task Force Report*: Corrections 91 (1965).

[2] The only difference in the Maine Law is that the Legislature has found that certain crimes because of their nature automatically disqualify one from carrying on certain businesses. Accordingly, in the case at bar, embezzlement's relationship to an agency designed for the collection of money is obvious.

[3] As is aptly suggested by appellant on page 18 of the Jurisdictional Statement, under the authority of *Schware v. Board of Bar Examiners*, 353 U. S. 232, 243, before disqualifying an applicant from an occupation on the ground of a prior offense, "the nature of the offense which he has committed must be taken into account." The case at bar presents a classic example of a crime peculiarly related to a [illegible] profession, i.e., embezzlement in a money-handling occupation.

> [illegible] convictions should be considered relevant to [illegible] participate in activities posing particular dangers to society." *Task Force Report*: Corrections 91 (1965).

unable to pursue his occupation, but only after he has clearly shown that he was not lawfully pursuing that occupation. See *Hawker v. New York*, 170 U. S. 189.

Furthermore, the case at bar presents a stronger case than *DeVeau* on its facts. The appellant, DeVeau, was barred from continuing in his labor organization position 36 years after his conviction of grand larceny. In the case at bar, the appellant was convicted in January, 1960 for embezzlement of funds, released from prison in February, 1963 and was denied his license to operate a collection agency in March, 1966 (the act regulating collection agencies was not passed until 1965; effective January 1, 1966, c. 430, P. L. 1965, which is now Chapter 10, 32 M.R.S.A. §§ 571 - 583 inclusive [1966 pocket part]). In short, only six years had elapsed between the conviction and the exclusion of the appellant from his chosen occupation. The appellant has only been returned to society for a relatively short time when compared to the 36 years in *DeVeau*. No penologist would seriously assert that rehabilitation is completed on release from prison. Often it is never achieved. This Court was satisfied that despite the 36-year interval between conviction and broad statutory exclusion of DeVeau, the New York law itself, and as applied to DeVeau was "a responsible means for achieving a legitimate state aim, namely, eliminating corruption on the waterfront" (363 U. S. 157); thus the case at bar with only a 6-year interval between conviction and exclusion is even more meritorious, and the Maine Statute is a "legitimate state aim" to eliminate corruption in collection agencies. The Maine Statute, therefore, cannot be repugnant to the due process clause of the Fourteenth Amendment to the United States Constitution, on its face, or as applied to the appellant in the case at bar. This is precisely what the Maine Supreme Court has decided. (Jurisdictional Statement, Appendix A, p. 33 *et seq.*)

Any effort to distinguish *DeVeau* from the case at bar on the ground that in *DeVeau* the Court talked of wide-spread waterfront corruption, and in the case at

bar no such extensive problem exists, is without merit. No authority or logic has been or can be presented which would require that a State legislature must wait until a potentially dangerous situation breaks out into corruption before it can act. See *Fergeson v. Skrupra*, 372 U. S. 726. 32 M.R.S.A. § 575 is preventive legislation designed to regulate a profession in order to avoid development of significant criminal activity in the future. One does not wait until gangrene develops before taking corrective medical action.

No arguments have been advanced that the Maine statute in question is not rational, or that it does not reasonably achieve a legitimate state aim. *Williams v. Lee Optical Co.*, 348 U. S. 483. Suggestions that there may be other ways of effecting the legislative purpose in this area are nebulous at best. Similarly, the wisdom of the Maine Legislation is not a subject for judicial review. *Williams v. Lee Optical Co.*, 348 U. S. 483; *Day Brite Lighting Inc. v. Missouri*, 342 U. S. 421.

Given the restrictive and guarded wording of 32 M.R.S.A. § 575 in its specific enumeration of only certain crimes disqualifying one from obtaining a collection agency license, together with the reasonable application of this law to the appellant, in light of the crime of embezzlement as it relates to a business of money collections and the proximity of time between conviction and denial of application to reenter the collection business, this Court is urged to follow its own recent decision postulated in *DeVeau v. Braisted*. Indeed the case at bar presents a stronger case than *DeVeau* for upholding the Maine statute and its present application. Since *DeVeau* is controlling, and was properly relied upon by the Maine Supreme Court (Jurisdictional Statement, Appendix A, p. 37), there is no substantial Federal question presented by this appeal; this Court is therefore without jurisdiction.

B. 32 M.R.S.A. § 575, ON ITS FACE, AND AS INTERPRETED AND APPLIED IN THIS CASE, DOES NOT VIOLATE THE PROHIBITION

AGAINST *EX POST FACTO* LAWS CONTAINED IN SECTION 10, ARTICLE I OF THE UNITED STATES CONSTITUTION.

Appellant must show that 32 M.R.S.A. § 575 relates to crimes and their punishments in order to establish a substantial Federal question on the *ex post facto* issue. The expression "*ex post facto*" relates solely to crimes and their punishments and has no application to civil matters. *Calder v. Bull*, 3 Dall. 386, 1 L. Ed. 648; *Orr v. Gilman*, 183 U. S. 278, 285.

> "The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession. See *Hawker v. New York*, 170 U. S. 189." *DeVeau v. Braisted*, 363 U. S. 144, 160; see also *Flemming v. Nestor*, 363 U. S. 603, 614.

The purpose of the Maine Collection Agency Act was not to impose an additional penalty for past conduct, but rather to regulate conduct which the legislature has power to regulate within the scope of its police power. *Hankins v. Spaulding*, 78 Idaho 533, 307 P. 2d 222 (1957); *Myers v. Mathews*, 270 Wis. 453, 71 N.W. 2d 368 (1955). The Maine Legislature has sought by the passage of 32 M.R.S.A. § 575 to protect the public from those who by their past conduct have demonstrated their unfitness to be trusted with the property of others. The restrictions placed upon appellant by 32 M.R.S.A. § 575 come about as a relevant incident to a regulation of a present situation.

It is submitted that the rationale of the decisions of this Court in *DeVeau v. Braisted*, supra; *Flemming v. Nestor*, supra; *Hawker v. People of New York*, supra; *Calder v. Bull*, supra; *Orr v. Gilman*, supra, have clearly settled the *ex post facto* issue presented by this appeal.

lant, and hence the *ex post facto* issue does not present a substantial Federal question. *Zucht v. King*, 260 U. S. 174.

III

The Decision of the Supreme Judicial Court of Maine Was Correctly Decided.

Although not incorporated in the Notice of Appeal, appellant did raise in the Maine Court the question whether or not the action of the State of Maine Banking Commissioner in refusing to grant the license to the appellant was the application of an *ex post facto* law in violation of Section 10, Article I of the United States Constitution.

The Maine Court properly decided that the following rationale of a majority of the Court in *Hawker v. People of New York*, 170 U. S. 189, 200 was applicable in this case:

> "The thought which runs through these cases and others of similar import which might be cited is that such legislation is not to be regarded as a mere imposition of addition penalty, but as prescribing the qualifications for the duties to be discharged and the position to be filled, and naming what is deemed to be, and what is in fact, appropriate evidence of such qualifications." (Jurisdictional Statement, Appendix A, p. 32.)

The appellant did not convince the Court below that the purpose of 32 M.R.S.A. § 575 as applied to him was the mere imposition of additional penalty nor could appellant do so.

Justice Frankfurter, speaking for a plurality of the Court in *Dorsey v. Stuyvesant*, 299 U. S. 444, stated:

> "Barring convicted felons from certain employments is a familiar legislative device to insure honesty and good faith in specific vital areas." Id. at

The United States Circuit Court of Appeals for the First Circuit has applied the following test in dealing with regulatory legislation claiming to have an *ex post facto* application:

> "... If the statute is a bona fide regulation of conduct, which the legislature has power to regulate, it is not bad as an *ex post facto* law even though the right to engage in the conduct is made to depend upon past behavior even behavior before the passage of a regulatory act." *Cases v. United States*, 131 F. 2d 916 (1st Cir. 1942).

The Court below, in concluding that there was no constitutional prohibition, cited *In Re John Stanley*, 133 Me. 93, 174 A. 91 (1934) affirmed in *Stanley v. Public Utilities Commission*, 294 U. S. 76 for the criteria of an *ex post facto* law constitutionally prohibited:

> "Such '(a) law is *ex post facto* (after the deed or fact) when (1) it makes a criminal offense of what was innocent when done; or (2) it aggravates a crime, making it greater than it was when committed; or (3) it inflicts a punishment more severe than was prescribed at the time the crime was perpetrated; or (4) it alters the rules of evidence to the injury of the accused; or (5) it, in effect if not in purpose, deprives him of some protection to which he has become entitled. The expression relates solely to crimes and their punishment, and has no application to civil matters.' *In Re John M. Stanley*, 133 Me. 91, 93, 174 A. 98, affirmed in *Stanley v. Public Utilities Commission*, 295 U. S. 76, 55 S. Ct. 628, 79 L. Ed. 1311. (citations omitted)." (Jurisdictional Statement, Appendix A, p. 31) See also *Calder v. Bull*, 3 Dall. 386.

It is submitted that the Supreme Judicial Court of Maine was eminently correct in rejecting the appellant's contention that 32 M.R.S.A. § 535 [illegible] and as applied to appellant was not an *ex post facto* law in violation of Article I, Section 10 of the [illegible]

States Constitution, to find otherwise would be in clear contradiction to judicial precedent.

Furthermore, the Maine Court went to great length to consider the due process argument raised by the appellant, namely that 32 M.R.S.A. § 575 provides for unfair disqualification of persons who have been convicted of certain crimes. The fact that the Maine statute does not provide any mechanism for a hearing was decided by the Maine Court to be of no constitutional consequence. The Court in deciding this point cited numerous State and Federal authorities set out at pages 34 and 35 of Appendix A of the Jurisdictional Statement. Moreover, the Court found *Hawker v. New York*, 170 U. S. 189, where no hearing was provided by statute, and more recently *DeVeau v. Braisted*, 363 U. S. 144, where a hearing provision was similarly excluded from the statute, to be definitive authority that the absence of the hearing provision in licensing laws did not violate the due process clause of the Fourteenth Amendment of the United States Constitution. (Jurisdictional Statement, Appendix A, pp. 36, 37.)

The Court further pointed to the need for and policy behind the present Maine regulatory statute. It suggested that the free-wheeling nature of collection agencies

> "... may, and not infrequently does, open the way for the agency to indulge in collection practices in accounting procedures which in the public interest and welfare, including both the credit and debit communities, establish need for, and propriety of, regulation. The Legislature was competent to declare the activity as one affecting the public welfare." (Jurisdictional Statement, Appendix A, p. 29)

Little more need be said than that the Supreme Judicial Court of Maine looked to the reasons behind 32 M.R.S.A. § 575 and found them to be compelling, and the law in question thereby to be a valid exercise of legislative power. The Maine Court properly looked to

this Court for guidance as to whether regulatory legislation of this nature is unfair to the appellant so as to violate his rights under section 1 of the Fourteenth Amendment to the United States Constitution. It concluded, particularly under *Hasselar* and *DeVeau*, that this Court found no constitutional violations in similar situations. For these reasons, the decision of the Supreme Judicial Court of Maine in this case must be viewed as clearly correct.

Conclusion

We respectfully submit, therefore, that this appeal has not been taken in conformity with the Revised Rules of this Court, that no substantial Federal question is presented, and that the decision below is clearly correct and pray the appeal be dismissed.

JAMES S. ERWIN
Attorney General

/s/ George C. West
GEORGE C. WEST
Deputy Attorney General

JEROME S. MATUS
Assistant Attorney General

Appendix A

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. 281
Lower Docket 945

RUPERT WATSON, d/b/a MAINE-WIDE ADJUSTERS,

PLAINTIFF-APPELLANT

vs.

STATE OF MAINE COMMISSIONER OF BANKING,

DEFENDANT-APPELLEE

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

1. Notice is hereby given that Rupert Watson, d/b/a Maine-Wide Adjusters, the Plaintiff-Appellant above-named, hereby appeals to the Supreme Court of the United States from the final Judgment of the Supreme Judicial Court of the State of Maine (which affirmed the Judgment for Defendant by the Superior Court of Penobscot County) entered herein on October 28, 1966.

   This Appeal is taken pursuant to 28 U. S. C. § 1257 (2).

2. The Clerk will please prepare a transcript of the Record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in such transcript the following:

   a. The Certificate of Decision (Opinion and Judgment) of this Court as entered July 28, 1966.

   b. The Record as filed in the Supreme Judicial Court of the State of Maine and in the Superior Court of Penobscot County.

   c. This Notice of Appeal.

3. The following questions are presented by this Appeal:

   a. Whether 32 M.R.S.A. § 575, on its face, and as interpreted and applied in this case, violates Amendment XIV, Section 1 of the United States Constitution, in that it effects a deprivation of a liberty and property without due process of law.

   b. Whether the foregoing Statute, on its face, and as interpreted and applied in this case, is an unconstitutional deprivation of liberty and property, without due process of law, in that it establishes a permanent lifelong bar to Appellant's pursuit of a lawful occupation, solely because of a prior criminal conviction, and fails to provide any opportunity to attempt to prove rehabilitation and fitness.

Dated: January 26, 1967

Malcolm S. Stevenson /s/
MALCOLM S. STEVENSON
31 Central Street
Bangor, Maine

Marvin M. Karpatkin /s/
MARVIN M. KARPATKIN

Eleanor Holmes Norton /s/
ELEANOR HOLMES NORTON
c/o American Civil Liberties Union
156 Fifth Avenue
New York, N. Y. 10010

Joseph T. Walsh, Jr. /s/
JOSEPH T. WALSH, JR.
6 State Street
Bangor, Maine

Proof of Service

I, Eona P. Morton, a Stenographer employed by Malcolm S. Stevenson, Esq. one of the Attorneys for the

Appellant, herein, depose and say that on the 26th day of January 1967 I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on the Attorney for the Appellee herein by mailing a a copy thereof in a duly addressed envelope, postage prepaid, to Honorable Jerome S. Matus, Assistant Attorney General, at his office, State House, Augusta, Maine.

Eona P. Morton /s/

Subscribed and sworn to:

Joseph T. Walsh, Jr. /s/
Justice of the Peace

Appendix B

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. 281
Law Docket 945

RUPERT WATSON, d/b/a
MAINE-WIDE ADJUSTERS,

PLAINTIFF-APPELLANT

vs.

STATE OF MAINE
COMMISSIONER
OF BANKING;

DEFENDANT-APPELLEE

Order

IT IS HEREBY ORDERED that the Motion Dated March 24, 1967 requesting on behalf of Plaintiff-Appellant an Extension of Time to File a Jurisdictional Statement with the United States Supreme Court in the Appeal now in progress is hereby granted, said extension to terminate on May 12, 1967.

Dated: March 28, 1967

Robert B. Williamson

ROBERT B. WILLIAMSON /s/
Chief Justice Robert B. Williamson
Maine Supreme Judicial Court
Augusta, Maine

Appendix C

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. 281
Lower Docket 945

RUPERT WATSON, d/b/a MAINE-WIDE ADJUSTERS, PLAINTIFF-APPELLANT *vs.* STATE OF MAINE COMMISSIONER OF BANKING, DEFENDANT-APPELLEE	MOTION FOR EXTENSION OF TIME TO FILE JURISDICTIONAL STATEMENT WITH THE UNITED STATES SUPREME COURT

In accordance with the United States Supreme Court Rules of Practice and procedure, Rule 13 (1), NOW COMES Plaintiff-Appellant Rupert Watson, d/b/a Maine-Wide Adjusters, through his Attorney, Malcolm S. Stevenson, Esq., 31 Central Street, Bangor, Maine, for Messrs. Joseph T. Walsh, Esq., 6 State Street, Bangor, Maine, Marvin M. Karpatkin, Esq. and Eleanor Holmes Norton, American Civil Liberties Union, 156 Fifth Street, New York, N. Y., and respectfully requests this Honorable Justice to grant an Extension of Time to said Plaintiff-Appellant, through his Attorneys, to file a Jurisdictional Statement with the United States Supreme Court, the good and sufficient cause for such Motion and Request being the complexity of the issues involved, and the inability of said Attorneys, due to circumstances beyond their control, to file the necessary Statement within the allotted time, and Plaintiff-Appellant, through its Attorneys, further moves that the period of Extension in order to file said Jurisdictional Statement shall be no longer than forty-

five (45) days from date of Order signed by the Honorable Justice.

Dated: May 5, 1967

Malcolm S. Stevenson /s/
MALCOLM S. STEVENSON, ESQ.,
An Attorney for Plaintiff-Appellant
31 Central Street
Bangor, Maine

Proof of Service

I, Malcolm S. Stevenson, Esquire, Attorney for Plaintiff-Appellant, herein depose and say that on the 5th day of May, 1967, I served a copy of the foregoing Motion for Extension of Time to File Jurisdictional Statement on the Attorney for the Defendant-Appellee herein by mailing a copy thereof in a duly addressed envelope, postage prepaid, to Jerome S. Matus, Esquire, Assistant Attorney General, at his office, State House, Augusta, Maine.

Malcolm S. Stevenson /s/
MALCOLM S. STEVENSON, ESQUIRE

Subscribed and sworn to:

Eona P. Morton /s/
Justice of the Peace

On the above Motion, ORDERED: That the period of extension in order to file said Jurisdictional Statement is extended for forty-five (45) days from this date.

Dated: May 11, 1967.

Robert B. Williamson /s/
ROBERT B. WILLIAMSON
Chief Justice,
Supreme Judicial Court

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FILED
AUG 16 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 332

RUPERT WATSON d/b/a MAINE-WIDE ADJUSTERS,

Appellant,

—v.—

STATE OF MAINE BANK COMMISSIONER,

Appellee.

ON APPEAL FROM THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 332

RUPERT WATSON d/b/a MAINE-WIDE ADJUSTERS,

Appellant,

—v.—

STATE OF MAINE BANK COMMISSIONER,

Appellee.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

BRIEF IN OPPOSITION TO MOTION TO DISMISS

Appellee contends that this appeal was not docketed in time and must therefore be dismissed pursuant to Rule 16(1)(a) of the Rules of this Court. Appellee also moves to dismiss on the ground that Point 3 of appellant's Jurisdictional Statement—the *ex post facto* argument—presents an issue not reserved in the questions posed in appellant's Notice of Appeal or "fairly comprised therein." Both contentions are without merit.

1. Appellant has filed with the Clerk of the Court a letter from the Clerk of the Supreme Judicial Court in Maine (Appendix, *infra*, p. 5), which states that although appellant, by letter dated June 19, 1967, requested that a certified transcript of the record in this case be forwarded to the Clerk of this Court, the certified record was not forwarded until June 30, 1967, because of "some difficulty which I experienced in obtaining a copy of the record of the proceedings in the Penobscot County Superior Court." Con-

sequently, the case was not docketed until July 3, 1967, although appellant's Jurisdictional Statement was timely filed. Inasmuch as the delay resulted from no fault of appellant, appellee's contention that the appeal must be dismissed because the docketing of the case was untimely is without merit.

2. Appellee further contends that appellant's *ex post facto* argument in his Jurisdictional Statement was not "reserved in the questions posed in the Notice of Appeal or fairly comprised therein." Appellant has filed with the Clerk of this Court an affidavit (Appendix, *infra*, p. 6) of the secretary who typed and still retains the draft copy of the Notice of Appeal, which in fact contained the *ex post facto* point among the others presented. The Notice of Appeal was dictated over the telephone by New York counsel to a stenographer in Maine, where the Notice of Appeal had to be filed. Thus, a final copy of the Notice of Appeal was not received by New York counsel until after the expiration of time for its filing. In the course either of dictating the Notice of Appeal or in its transcription, Point 3 was lost through stenographic error. It is impossible to say now precisely how the error occurred. However, in light of the existence of the draft copy containing the *ex post facto* point, its omission in the actual Notice of Appeal does not rise above the level of stenographer's error.*

* Moreover it is submitted that the *ex post facto* point is any case "fairly comprised" within Point 1 of the Notice of Appeal relating to due process. This is not a case like *Head* v. *New Mexico Board*, 374 U. S. 424 (1963) in which, as appellee points out, "the argument was not made to the State Court nor was it reserved in the notice of appeal to this court." (Motion, p. 5). Rather the *ex post facto* point was raised at all stages of these proceedings below. Central to the intent of Rule 10(2)(c) is the breadth implied in the words "fairly comprised therein," for precious constitutional rights may depend upon their interpretation. In this case it cannot be doubted that the *ex post facto* point is "fairly comprised" within the meaning of due process as set forth in Point 1 in light of the

CONCLUSION

The procedural objections raised by appellee are without merit, as are his contentions, anticipated in appellant's Jurisdictional Statement, that the appeal presents no substantial federal question and that the decision below was plainly correct.

Respectfully submitted,

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broad wording of that argument that the statute " . . . as interpreted and applied in this case . . . effects a deprivation of liberty and property without due process of law." That an *ex post facto* law is a cardinal denial of due process cannot be denied. Compare *Bouie* v. *Columbia*, 378 U. S. 347, 354-355 (1963), where this Court held that "[i]f a state legislature is barred by the *ex post facto* clause from passing such a law, it must follow that a State Supreme Court is barred by the due process clause from achieving precisely the same result by judicial construction." It follows therefore that the *ex post facto* point is "fairly comprised" within Point 1 of appellant's Notice of Appeal.

APPENDIX

STATE OF MAINE

SUPREME JUDICIAL COURT

PORTLAND, MAINE 04111

CHARLES B. RODWAY, JR.
CLERK OF THE LAW COURT

August 7, 1967

Melvin L. Wulf, Legal Director
American Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

Re: Rupert Watson d/b/a Maine-Wide Adjusters V.
State of Maine Commissioner of Banking

Dear Mr. Wulf:

Please be advised that in accordance with your request in your letter dated June 19, 1967, I mailed to the Supreme Court of the United States a certified transcript of the record in the above case on June 30, 1967. The delay in mailing the record and certifying it to the United States Supreme Court was occasioned by some difficulty which I experienced in obtaining a copy of the record of the proceedings in the Penobscot County Superior Court.

I regret this delay, and I hope it will not result in any inconvenience either to you or to the Court.

Very truly yours,

/s/ CHARLES B. RODWAY, JR.
Charles B. Rodway, Jr.

CBR, Jr/wm

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

I, BELLA GREENE, being duly sworn, depose and say that on January 26, 1967 Marvin M. Karpatkin, Esq. dictated to me the Notice of Appeal in the case of *Rupert Watson* v. *State of Maine Commissioner of Banking* (October Term, 1967, No. 332). The draft copy of that Notice of Appeal, which I typed and which is still in my possession as part of the regular case file, contains the handwritten corrections made by Mr. Karpatkin on the day I typed it. Point 3 of the draft Notice of Appeal states: "The following questions are presented by this Appeal:" There follow three questions labeled (a), (b), and (c). Question (a) relates to due process of law. Question (b) relates to a permanent bar to pursuing an occupation without any opportunity to prove rehabilitation. Question (c) reads as follows:

> "Whether the foregoing statute, on its face, and as interpreted and applied in this case, violates the prohibition against *ex post facto* laws contained in the United States Constitution, Article I, Section 10."

Question (c) relating to the *ex post facto* prohibition is now and has always been a part of the Notice of Appeal, which I typed.

/s/ BELLA GREENE

Sworn to before me this
11th day of August, 1967.

MELVIN L. WULF
Notary Public, State of New York
No. 31-4853350
Qualified in New York County
Commission Expires March 30, 1969

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

WATSON, DBA MAINE-WIDE ADJUSTERS *v.* STATE OF MAINE COMMISSIONER OF BANKING.

APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE.

No. 332. Decided October 9, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.